

***United States Court of Appeals  
for the Second Circuit***



**APPENDIX**





75-7669

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United States Court of Appeals

FOR THE SECOND CIRCUIT

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WEITNAUER TRADING COMPANY LTD.,

*Plaintiff-Judgment  
Creditor-Appellee,*

—against—

MORTON L. ANNIS,

*Defendant-Judgment  
Debtor-Appellant.*

---

ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

---

APPENDIX

---

RICH KRINSKY POSES KATZ & LILLIENSTEIN  
*Attorneys for Defendant-Judgment  
Debtor-Appellant*  
99 Park Avenue  
New York, New York 10016  
867-7200

WIKLER GOTTLIEB TAYLOR & HOWARD  
*Attorneys for Plaintiff-Judgment  
Creditor-Appellee*  
40 Wall Street  
New York, New York 10005  
422-1080

LANKENAU KOVNER BICKFORD & ABRONS  
Trial Counsel  
30 Rockefeller Plaza  
New York, New York 10020  
489-8230

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PAGINATION AS IN ORIGINAL COPY

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Not signed

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Annis, Sr. and Master Packaging Inc.

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CIVIL DOCKET  
UNITED STATES DISTRICT COURT

Jury demand date:

71 CIV. 782

D. C. Form No. 106 Rev.

## TITLE OF CASE

WEITNAUER TRADING COMPANY LTD.

AGAINST.

MORTON L. ANNIS

## ATTORNEYS

For plaintiff:

WIKLER, GOTTLIEB TAYLOR & HOWARD.  
64 Wall St.

N.Y.C.N.Y. 10005

trial counsel: Lankenau Kovner Bickford  
& Beer, 30 Rockefeller Plaza, NYC 100

For defendant:

Newman, Rich, Krinsly & Katz  
99 Park Ave. NY 10016 867-7200

## STATISTICAL RECORD

## COSTS

## DATE

NAME OR  
RECEIPT NO.

## REC.

## DISR.

J.S. 5 mailed X

Clerk

2-2-71

Wikler

15

J.S. 6 mailed ✓

Marshal

2-26-71

Lankenau

15

Basis of Action:

Docket fee

2-26-71

Bickford

5

BREACH OF CONTRACT.  
\$150,000

Witness fees

2-26-71

Rich

5

Action arose at:

Depositions

2-26-71

Rich

5

ONLY COPY AVAILABLE

71 CIV. 782

DATE	PROCEEDINGS	Date Order or Judgment Noted
F 23-71	Filed Complaint. Issued Summons.	
Apr 14-71	Filed summons with marshal's ret. Served Morton L. Annis by Aleida Deneha on 3-31-71	
Apr 28-71	Filed ANSWER to complaint.	NRK&K
May 6-71	Filed Notice to take Oral deposition of Morton L. Annis.	
May 11-71	Filed Reply to counterclaim.	
May 23-71	Filed Notice of Motion re: Summary Judgment. Ret. 11/30/71. (by Pltf.)	
May 23-71	Filed Plaintiff's Memorandum of Law.	
Dec 20-71	Filed Affidavit of Morton L. Annis in opposition to pltf's motion for summary judgment.	
Dec 20-71	Filed Defendant's Memorandum opposing motion for summary judgment.	
Dec 21-71	Filed (in court) Deposition of Dft	
Feb 2/72	Filed Opinion # 38226 by Judge Croake The motion is denied So Ordered CroakeJ (mailed Notice)	
Mar 10-72	Filed Pltff Note of Issue and statement of readiness.	
Apr 25-73	Filed Pltff's Notice to take Oral Deposition of Ronald Kasson, 5/17/73, 10:00 A.M.	
Oct 9-73	Filed notice of minute clerk:-	
Oct 10-73	Non jury trial began.	
Oct 10-73	Non jury trial contd. and concluded. Decision reserved. Post-trial briefs shall be filed by noon on Nov. 30, 1973. Reply briefs, if any by Dec. 7, 1973.	
Dec 5-73	Filed transcript of record of proceedings, dated Oct-9, 10, 1973	
Dec 30-73	PRE-TRIAL CONFERENCE HELD BY Carter J	
June 13-74	Filed Opinion #40812.... constituting the court's findings of fact and conclusions of law. The defendant's liability for reasonable collection expenses and counsel fees in the amount of \$32,065.44 has been established. The evidence indicates that defendant committed himself to guarantee up to \$150,000. plus interest, for any debts which plaintiff incurred on behalf of Intercontinental. Judgment is therefore awarded against defendant in the sum of \$32,065.44 for expenses and counsel fees to date and judgment for \$150,000, plus interest at 6% from the date of the filing of this action. So ordered. -- Carter, J. m/n	
June 19-74	Filed JUDGMENT AND ORDER #74,530 that plaintiff have judgment against the defendant in the amount of \$32,065.44 for expenses and counsel fees to date, and for the amount of \$150,000, plus interest at 6% from date of the filing of this action. -- Clerk.	
July 1-74	Filed pltf's affdvt. and notice of motion to amend judgment and include more interest. - ret. 7-12-74	
July 8-74	Filed defendants notice of appeal to the USCA for the 2nd Circuit from final judgment in favor of pltf. - copy mailed to Winkler, Gottlieb Taylor & Howard, Esqs.	
July 19-74	Filed pltf's notice to take depositions of Morton L. Annis on 8-5-74	
July 19-74	Filed notice of engagement of trial counsel for plaintiff.	LKB&B
July 11-74	Filed Endorsement -- Pltff moves to amend the court's judgment to award interest at the rate of 7 1/2% from 11/1/70 to 8/31/72 etc. . . . Pltff's agreement with deft. provided for payment of guarantee entered into when due or upon demand. Pltff. demanded full compliance with the guarantee on 9/22/78. Pltff. urges that prejudgment interest should begin to run from a date prior to 9/22/70. The facts, however, do not justify that claim. Prior to 9/22/70, although there had been default in payment by Intercontinental Wines & Spirits, Ltd. and pltf. had asserted deft's liability, it negotiated with deft. further, and its action, at least until 9/22/70 is not consonant with its assertion that it had invoked the guarantee's terms and conditions. On 9/22/70 however, it clearly and unequivocally invoked the agreement. Interest, therefore, is awarded at 7 1/2% from 9/22/70 to 8/31/72 and thereafter at 6% So ordered Carter J.	



18-74 Filed plttf's reply memorandum in support of motion to amend judgment.  
18-74 Filed plttf's trial memorandum.

20-74 Filed stipulation designating exhibits to be transmitted to U.S.C.A.

4-75 Filed stip. and order adj. above motion to 2-7-75 -- Carter, J.

2-75	Filed stip. and order adj. above motion to 2-7-75 12:00 PM, 1975
2-75	Filed pltf's affdvt. of Victor A. Kovner in opposition to deft's motion to vacate.

17-75 Filed pltf's request for further production of documents

-75 Filed plt's notice to take depositions of First National Bank of Tampa, Exchange National Bank of Tampa, Marine Bank (now Flagship Bank) and Seminole Bank on 3-21-75

-75 Filed pltf's notice of resumption of depositions of deft. on 3-21-75

8-75 Filed deposition of Morton L. Annis on January 31, 1975.

120-25 Filed pltf's notice of resumption of depositions of defl. on 4-4-75

0-75 Filed pltf's request for further production of documents.

23-75 Filed memo endorsed on deft's motion filed 1-14-75: Motion denied. So ordered. -- Carter, J. m/n

0-75. Filed ~~and~~ adv. of William P. Laino on behalf of "General Cigar" which was served as garnishee --- in response to deft's motion to modify execution.

30-75 Filed plaintiff-judgment creditors affdvt. and notice of cross-motion to direct judgment creditor to pay in installments as indicated. - ret. 5-7-75

-02-75 Filed deft's affdvt. and order to show cause on motion to modify income execution.  
Personal service by 4-30-75 -- ret. 5-1-75 -- Carter, J.

-23-75 Filed pltf's notice to take depositions of Exchange National Bank of Tampa, et.al.  
as indicated.

-05-75 Filed debt's affdvt. in further support of motion to modify income execution and in opposition to cross-motion to direct installment payments.

-98-75 Filed pltf's reply affdvt. in connection with cross-motion for an installment payment order.

-08-75 Filed pltf's reply memorandum in connection with cross-motion for installment payment order.

	payment order.
-22-	Filed plif's request for production of documents

Filed plaintiff's notice to take depositions of Morton L. Aron, Jr. on 6-10-72. No deposition issued.

-25-77	Filed deposition of Douglas P. Hance on 5-8-77	m/p
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44-38861-75 Filed deposition of William George Premaza on 5-8-75

22-75 Filed deposition of Joseph R. Martinez on 5-8-75



DATE	PROCEEDINGS	Date On Judgment
5-23-75	Filed deposition of Douglas K. Harwell Jr. on 5-8-75	m/n
5-23-75	Filed deposition of Stanley W. Rosenkrantz on 5-8-75	m/n
5-23-75	Filed deposition of William Kissinger on 5-8-75	m/n
5-23-75	Filed deposition of Dr. Leonard J. Annis on 5-9-75	m/n
5-23-75	Filed deposition of Marian Annis (Mrs. Morton Annis) on 5-9-75	m/n
5-23-75	Filed deposition of Michael Dougherty on 4-4-75	m/n
5-23-75	Filed deposition of Martin L. Annis on 4-4-75	m/n
6-26-75	Filed true copy of order from the USC with opinion attached--- ORDERED that the judgment of the District Court is affirmed in accordance with the opinion of this court with costs to be taxed against the appellant. Clerk judgment entered, Clerk (no bill of costs or statement attached) m/n	
-18-75	Filed deposition of Lorraine M. Kolakowski on May 8, 1975 at 3:38 p.m.	
-06-75	Filed OPINION #43203. Deft. Annis moves to reduce what he calls a "monthly income execution." Pltf. cross-moves for an installment payment order requiring deft. to pay plaintiff \$5,000 per month. For reasons stated herein the parties are directed to settle an order on ten days' notice vacating the execution of 2-21-75: vacating the restraining notice dated 10-7-74, against General Cigar Corp.; and providing an installment payment order directing defendant to make installment payments to pltf. of \$3,000 plus interest, per month. Settle order. -- Carter, J. m/n	
9-30-75	Filed ORDER that the court's decision of May 23, 1975, denying defendants motion to vacate the Restraining Notice issued to General Cigar Corp., dated 10-7-74, is recalled and such Restraining notice is vacated. The execution of 2-21-75 is vacated. Morton L. Annis, the deft. judgment debtor is directed to pay as indicated herein. Upon the acceleration of the payment of the principal amount of the judgment, as a result of the payments not provided for herein, the amount of the installment payments shall be adjusted accordingly. -- Carter, J.	
10-30-75	Filed deft's reply aff. of Leslie D. Corwin in opposition to proposed counter-order.	
11-12-75	Filed pliff's request for production of documents.	
11-19-75	Filed pliff's notice of taking deposition of National Bank of North America on 12-01-75.	
11-25-75	Filed deft's-Subsequent Debtor, Notice of Appeal to the U.S.C.A. from an order entered on 10-30-75. Am to Lankman, Lowmyer & Brickford, 11-28-75.	
12-03-75	Filed order to show cause re: deft's motion in Contempt. -- Jct. 12-02-75-Carter, J.	
12-10-75	Filed affidavit of deft. with ref. to the pliff's motion for an order to punish the Deft. for contempt.	
12-10-75	Filed Victor L. Kramet reply affidavit in support of motion to adjudge Deft in Contempt.	
12-09-75	Filed Deft-John's second affidavit & Notice of Cross-Motion and to amend or modify an order.	
12-09-75	Filed MR. EIDSON's 2d Deft-John's second affidavit & Notice of Cross Motion, etc. Notice EIDSON in all respects. J. J. EIDSON--Carter, J. (aff 12-10-75)	

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

----- X

WEITNAUER TRADING COMPANY, LTD.,:

Plaintiff,:

File No. 71 Civ. 782  
(RLC)

-against-

:

NOTICE OF MOTION

MORTON L. ANNIS,

:

Defendant.:

----- X

S I R S:

PLEASE TAKE NOTICE that, upon the annexed affidavit of LESLIE D. CORWIN, sworn to January 8, 1975, the defendant will move this Court at a Stated Term for the hearing of motions, to be held at the United States Courthouse, Southern District of New York, Room 110, Foley Square, New York, New York, on the 24th day of January, 1975, at ten o'clock in the forenoon of that day, or as soon thereafter as counsel may be heard, for an order pursuant to Rule 65 of the Federal Rules of Civil Procedure, vacating Plaintiff's attorney's ex parte restraining notice dated October 7, 1974, and for such other and further relief as to this Court may seem just and proper.

Dated: New York, New York  
January 8, 1975

Your, etc.,

RICH, KRINSKY, POSES, KATZ &  
LILLIENSTEIN  
Attorneys for Defendant  
99 Park Avenue  
New York, New York 10016  
(212) 867-7200

6A

TO:  
Wikler, Gottlieb, Taylor & Howard  
Attorneys for Plaintiff  
30 Rockefeller Plaza  
New York, New York 10020  
(212) 422-1080



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

----- X

WEITNAUER TRADING COMPANY, LTD.,:

Plaintiff,: File No. 71 Civ. 782  
(RLC)

--against- :

AFFIDAVIT

MORTON L. ANNIS, :

Defendant.:

----- X

STATE OF NEW YORK )  
 ) SS.:  
COUNTY OF NEW YORK)

LESLIE D. CORWIN, being duly sworn, deposes and says;

1. That ne is an attorney associated with the firm of Rich, Krinsly, Poses, Katz & Lillienstein, attorneys for the defendant in this proceeding and is fully familiar with all the facts and circumstances relating thereto. This affidavit is submitted in support of defendant's motion to vacate a restraining notice issued ex parte by trial counsel for the plaintiff.

2. Heretofore and on or about October 7, 1974 a restraining notice to judgment debtor was issued to GENERAL CIGARS (sic) CORP., 605 Third Avenue, New York, New York. A copy of said restraining notice is attached hereto, marked Exhibit "A", and made a part hereof. This restraining notice was issued ex parte and on information and belief was not issued pursuant to any order of this Court. We have been formally requested by GENERAL CIGAR CORP. to have this restraining notice vacated.

RICH, KRINSKY, POSES, KATZ & LILLIENSTEIN

3. Plaintiff has attempted here to avail itself of Rule 69 of the Federal Rule of Civil Procedure by bringing a proceeding supplementary to and in aid of its original judgment dated June 19, 1974. (The Court should note that this judgment was modified pursuant to an order by endorsement dated September 11, 1974 and a new judgment filed October 2, 1974. Appeals from both judgments are now pending; the record and appellant's brief have been filed.) In view of the applicable Federal and New York State Law, plaintiff's notice to GENERAL CIGAR CORP. has no support in law, and must be considered a nullity and ordered vacated.

4. Rule 69(a) of the Federal Rules of Civil Procedure reads in pertinent part as follows:

"In general. Process to enforce a judgment for the payment of money shall be a writ of execution, unless the court directs otherwise. The procedure on execution, in proceedings supplementary to and in aid of a judgment, and in proceedings on and in aid of execution shall be in accordance with the practice and procedure of the state in which the district court is held, existing at the time the remedy is sought, except that any statute of the United States governs to the extent that it is applicable."

The District Court which rendered the judgment is the proper court to entertain proceedings supplementary to and in aid of the judgment or execution. U. S. exrel Marcus v Lord Electric Co., 43 F.Supp 12 (WD Pa., 1942); Globe Indemnity Co. v Roe, 37 F. Supp. 761 (SDNY, 1941). And, subject to the proposition that any statute of the United States governs, it

is clear that Rule 69 of the Federal Rules of Civil Procedure provides for continuing conformity to State law in determining the availability of final remedies for the enforcement of a judgment. Moore's Federal Practice 2d Ed. Vol. 7, §69.04.(1974).

5. The purported supplementary proceeding employed here by plaintiff is invalid. The controlling federal statute, which specifies the method to be employed, in keeping within the guidelines of Rule 69, is 28 U.S.C. §1962 which provides:

"Every judgment rendered by a district court within a State shall be a lien on the property located in such State in the same manner, to the same extent and under the same conditions as a judgment of a court of general jurisdiction in such State, and shall cease to be a lien in the same manner and time. Whenever the law of any State requires a judgment of a State court to be registered, recorded, docketed or indexed, or any other act to be done, in a particular manner, or in a certain office or county or parish before such lien attaches, such requirements shall apply only if the law of such State authorizes the judgment of a court of the United States to be registered, recorded, docketed, indexed or otherwise conformed to rules and requirements relating to judgments of the courts of the State."

(Emphasis supplied)

In exercise of the option thus created by 28 U.S.C. §1962 the State of New York enacted what is now CPLR § 5018(b), which provides that:

"A transcript of the judgment of a court of the United States rendered or filed within the state may be filed in the office of the clerk of any county and upon such filing the clerk shall docket the judgment in the same manner and with the same effect as a judgment entered in the supreme court within the county." (Emphasis supplied)



Under this statute, a federal judgment, upon being docketed with a clerk of a county of the state, becomes a judgment of a Supreme Court of the State of New York for purposes of enforcement in that County. In this respect § 5018(b) gives to a federal judgment docketed in the county clerk's office an effect similar to that given by CPLR § 5018(a) to the judgment of a state court rendered in another county which is so docketed. Knapp v McFarland, 462 F.2d 935 (2nd Cir., 1972). See generally Brownell v. Parsons, 220 N.Y. 483, 487, 116 N.E.366 (1917); Dieffenbach v. Roch, 112 N.Y. 621, 626, 20 N.E.560 (1889); Quackenbush v. Johnston, 249 App. Div. 452, 453-454, 29<sup>th</sup> N.Y.S. 123, 125 (3d Dept. 1937).

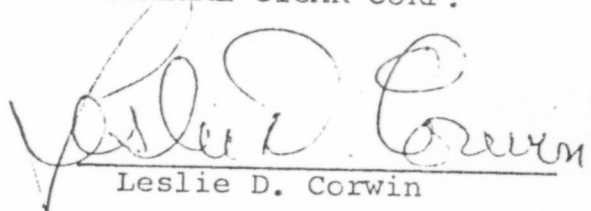
6. The Second Circuit, in United States v. Hodes 355 F.2d 746 (2nd Cir. 1966), has made it quite clear that under New York law, a federal judgment must be docketed with the office of the clerk of a county before it obtains the status of a judgment lien on the judgment debtor's property in that county.

\*This office has conducted a thorough search in the County Clerk's office, New York County, as to all judgments entered from June 19, 1974, and upon information and belief we can report that no judgment has been entered against the defendant by plaintiff.

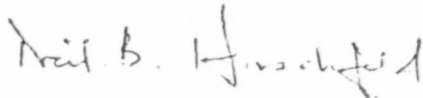
7. Judgments of a federal District Court have the same effect, and no more, in operation as the laws of

the state in which they are rendered prescribes for judgments of state courts. United States v Harpootlian, 24 F.2d 646 (2d Cir., 1928). Proceedings supplementary to a federal District Court must therefore be in compliance with the requirements of filing of the applicable state court.

WHEREFORE, your defendant respectfully requests that an order be issued here vacating and setting aside the restraining notice herein issued to GENERAL CIGAR CORP.

  
Leslie D. Corwin

Sworn to before me this  
8th day of January, 1975



NEIL B. HIRSCHFELD  
NOTARY PUBLIC, State of New York  
No. 39-1007665  
Qualified in Nassau County  
Term Expires March 30, 1978



U.S. DISTRICT COURT  
COUNTY OF SOUTHERN DISTRICT OF NEW YORK

Index No. 71 Civ. 702

(RLO)

WEITNAUER TRADING COMPANY, LTD.,

Plaintiff

against

MORTON L. ANNIS,

Defendant

RESTRAINING NOTICE  
TO JUDGMENT DEBTOR

## The People of the State of New York

TO GENERAL CIGARS CORP., 605 Third Avenue,  
New York, New York 10016

judgment debtor

GREETING:

WHEREAS, in an action in the U.S. District Court of Southern District of New York

between

WEITNAUER TRADING COMPANY, LTD.,

as plaintiff and

MORTON L. ANNIS,

as defendant

who are all the parties named in said action, a judgment was entered on June 19,

1974

in favor of WEITNAUER TRADING COMPANY, LTD.,

judgment creditor and against

MORTON L. ANNIS,  
in the amount of \$182,065.44  
from March 1,of which \$182,065.44  
1971 remains due and unpaid;judgment debtor  
together with interest thereon

TAKE NOTICE that pursuant to subdivision (b) of Section 5222 of the Civil Practice Law and Rules, which is set forth in full herein, you are hereby forbidden to make or suffer any sale, assignment or transfer of, interference with any property in which you have an interest, except as therein provided.

## CIVIL PRACTICE LAW AND RULES

Section 5222 (b) Effect of restraint; prohibition of transfer; duration. A judgment debtor served with a restraining notice is forbidden to make or suffer any sale, assignment, transfer or interference with any property in which he has an interest, except upon direction of the sheriff or pursuant to an order of the court, until the judgment is satisfied or vacated. A restraining notice served upon a person other than the judgment debtor is effective only if, at the time of service, he owes a debt to the judgment debtor or he is in the possession or custody of property in which he knows or has reason to believe the judgment debtor has an interest, or if the judgment creditor has stated in the notice that a specified debt is owed by the person served to the judgment debtor or that the judgment debtor has an interest in specified property in the possession or custody of the person served. All property in which the judgment debtor is known or believed to have an interest then in and thereafter coming into the possession or custody of such a person, including any specified in the notice, and all debts of such a person, including any specified in the notice, then due and thereafter coming due to the judgment debtor, shall be subject to the notice. Such a person is forbidden to make or suffer any sale, assignment or transfer of, or any interference with, any such property, or pay over or otherwise dispose of any such debt, to any person other than the sheriff, except upon direction of the sheriff or pursuant to an order of the court, until the expiration of one year after the notice is served upon him, or until the judgment is satisfied or vacated, whichever event first occurs. A judgment creditor who has specified personal property or debt in a restraining notice shall be liable to the owner of the property or the person to whom the debt is owed, if other than the judgment debtor, for any damages sustained by reason of the restraint. If a garnishee served with a restraining notice withholds the payment of money belonging or owed to the judgment debtor in an amount equal to twice the amount due on the judgment, the restraining notice is not effective as to other property or money.

TAKE FURTHER NOTICE that disobedience of this Restraining Notice is punishable as a contempt of court.

Dated: October 7, 1974

The name signed must be printed beneath

LANKENAU KOVNER BICKFORD &amp; BEER

Trial Attorney(s) for Judgment Creditor  
Office and Post Office Address30 Rockefeller Plaza  
New York, New York 10020

State of New York, County of \_\_\_\_\_

ss:

U.S. DISTRICT COURT

being duly sworn, deposes and says: that deponent is not a party to the action, is over 18 years of age and resides at \_\_\_\_\_

~~COURT OF SOUTHERN DISTRICT~~  
OF NEW YORK

being duly sworn, deposes and says: that deponent is not a party to the action, is over 18 years of age and resides at \_\_\_\_\_

That on the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_

On the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_

deponent served the within Restraining Notice on \_\_\_\_\_

WEINBAUER TRADING COMPANY,  
LTD.,

state either (a) or (b)

judgment debtor by mailing a copy of same in a securely sealed postpaid wrapper properly addressed to the judgment debtor at \_\_\_\_\_

(a) judgment debtor therein named, by delivering a true copy to said judgment debtor personally; deponent knew the person so served to be the person described as said judgment debtor therein.

Plaintiff

against  
MORTON L. ANNIS,

(b) a corporation, judgment debtor therein named, by delivering a true copy to personally, deponent knew said corporation so served to be the corporation described in said restraining notice as said judgment debtor and knew said individual to be thereof.

Sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_ }

Defendant

Sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_ }

Restraining Notice  
TO JUDGMENT DEBTOR

Enforcement of Money Judgment

LAMONT KOVNER BICKFORD & BEER

Trial Attorney(s) for Judgment Creditor

Office and Post Office Address

30 Rockefeller Plaza

New York, New York 10020

NOTICE OF ENTRY

Sir:- Please take notice that the within is a (certified) true copy of a duly entered in the office of the clerk of the within named court on

19

Dated,

Yours, etc.,

RICH. KRINSKY, POSES, KATZ & LILLIENSTEIN

Attorneys for

Office and Post Office Address

99 PARK AVENUE

BOROUGH OF MANHATTAN NEW YORK, N. Y. 10016

To

Attorney(s) for

NOTICE OF SETTLEMENT

Sir:- Please take notice that an order

of which the within is a true copy will be presented for settlement to the Hon.

one of the judges of the within named Court, at

on the day of 19

at M.

Dated,

Yours, etc.,

RICH. KRINSKY, POSES, KATZ & LILLIENSTEIN

Attorneys for

Office and Post Office Address

99 PARK AVENUE

BOROUGH OF MANHATTAN NEW YORK, N. Y. 10016

Attorney(s) for

Index No. Civ. 782 (RLC) Year 19 71

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

WEITNAUER TRADING COMPANY, LTD.,

Plaintiff,

-against-

MORTON L. ANNIS,

Defendant.

NOTICE OF MOTION  
AND  
AFFIDAVIT

RICH. KRINSKY, POSES, KATZ & LILLIENSTEIN  
Attorneys for defendant

Office and Post Office Address, Telephone

99 PARK AVENUE

BOROUGH OF MANHATTAN NEW YORK, N. Y. 10016  
867-7200

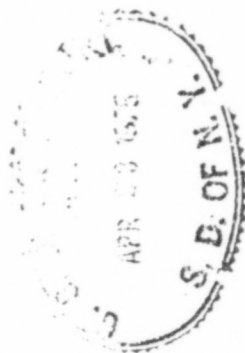
To

Attorney(s) for

Service of a copy of the within

Dated, is hereby admitted.

Attorney(s) for



100-100000

4/20/75

Not on demand

Sentenced Robert C. G.

Plaintiff,

-against-

MORTON L. ANNIS,

Defendant.

File No. 71 Civ.  
782 (RLC)

AFFIDAVIT IN  
OPPOSITION

STATE OF NEW YORK )  
 ) SS.:  
COUNTY OF NEW YORK)

VICTOR A. KOVNER, being duly sworn, deposes and  
says:

1. He is a member of the firm of Lankenau Kovner & Bickford, trial counsel to the plaintiff in this proceeding and is fully familiar with all the facts and circumstances relating thereto. This affidavit is submitted in opposition to defendant's motion to vacate a restraining notice issued by your deponent on October 7, 1974 and served upon General Cigar Corp., 605 Third Avenue, New York, N.Y. shortly thereafter.

2. Defendant seeks to vacate the restraining notice on the grounds that, pursuant to 28 U.S.C. §1962, a Federal judgment shall not become a lien on property within a state, until the judgment is docketed in a state court, in those states which require such docketing. (In New York a money



judgment must be docketed in order to become a lien upon real property, CPLR §5203).

3. Defendant has confused the procedures for making a money judgment a lien against real property with other provisions to enforce money judgments set forth in Article 52 of the CPLR. §5222 of the CPLR sets forth the sole and explicit requirements for a restraining notice. It may be served personally or by registered or certified mail, return receipt requested; it shall specify the relevant information about the judgment and is effective to restrain the transfer of any debt or property with which the person served has custody or in which he has reason to believe the judgment debtor has an interest.

4. Unlike CPLR §5203, which sets forth the procedure by which a money judgment may be enforced against real property, there is no requirement that the judgment be docketed in the County Clerk's office. Since your deponent is not aware of any real property owned by defendant within New York State, the transcript of the judgment was not docketed. To eliminate any question, on or about January 21, 1975 a transcript of the judgment was, in fact, docketed in the office of the County Clerk of New York County.

5. A second reason offered by the defendant in support of his motion to vacate is that the restraining notice was served ex parte. §5222 (a) explicitly provides that a restraining notice may be issued by the Clerk of the Court "or the attorney for the

judgment creditor as an officer of the Court". Your deponent issued the restraining notice in accordance with law.

6. Apart from the obvious fact that the restraining notice was properly issued pursuant to CPLR §5222 and aside from the fact that the transcript of the judgment has been docketed in the office of the County Clerk, there is a further reason for the denial of plaintiff's motion - that it has been brought as part of a plan to frustrate the judgment of this Court.

7. A number of searches by credit agencies, undertaken at the request of our office, have confirmed that defendant had a net worth in excess of \$1,000,000 in 1971, at the time this action was initiated, and another agency confirmed this fact in mid-1974.

8. On January 31, 1975 your deponent took the deposition of the defendant in Tampa, Florida as part of supplementary proceedings to enforce the judgment of this Court. Under oath, the defendant stated that since February 23, 1971, the date this action was instituted, he has made the following transfers of property to members of his immediate family:

- (a) Gifts of approximately \$70,000 within the past three or four years.
- (b) An assignment to his son of all the defendant's stock and notes in Master Packaging Co. (an interest which he acquired for over \$100,000 in 1973 and of which company he is Chairman of the Board and derives \$35,000 a year in consulting income).


The defendant claims this assignment was intended to repay a "loan" from his son made in 1970.

9. In addition, he testified that in 1972 he sold six Renoir paintings for an aggregate of \$160,000, but cannot recall the dealers to whom they were sold nor the disposition of the proceeds of such sales. In addition, he testified that in 1972 and 1973 he sold an aggregate of 10,000 shares of General Cigar stock for an aggregate price of between \$200,000 and \$250,000, but that he cannot recall where the proceeds of such sales were deposited. He further testified that in 1973, when he purchased a 25% interest in Master Packaging Co., a company which incurred indebtedness of nearly \$2,000,000 principally from banks, that the defendant personally guaranteed obligations of Master Packaging in the amount of \$450,000. He further testified that he could not recall whether or not Richard Turkel, the President of Master Packaging and the owner of a majority of its outstanding shares, also personally guaranteed these obligations (a failure of recollection reminiscent of the defendant's testimony in connection with the Intercontinental guarantee).

10. Although this affidavit is not the appropriate forum to summarize fully the testimony of defendant, and indeed a further examination will be held shortly, during settlement negotiations initiated by the Clerk of the Court of Appeals, defendant and his counsel have asserted that defendant has virtually no assets and cannot pay more than a fraction of the judgment. The pending motion to vacate the restraining notice must be viewed in the context of the gifts and transactions with family members while the litigation was pending, which purportedly have altered

defendant's status from that of a millionaire to a person of extremely limited assets.

WHEREFORE, your deponent respectfully requests that the motion be denied in all respects.

  
VICTOR A. KOVNER

Sworn to before me this  
18th day of February, 1975

ANGELA CARAVIOTIS, Notary Public  
State of New York, No. 03-1019275  
Qualified in Bronx County  
Cert. Filed in New York County  
Commission Expires March 30, 1975



~~At a Stated Term for the hearing of~~  
~~motions in the United States District~~  
~~Court, Southern District of New York,~~  
~~to be held at the United States~~  
~~Courthouse, Room 110, Foley Square,~~  
~~New York, New York, on the~~ day  
of 7 ~~1975~~.

~~P R E S E N T:~~

~~HON. ROBERT L. CARTER, JUSTICE~~  
~~UNITED STATES DISTRICT COURT~~

*SOUTHERN DISTRICT OF NEW YORK*

WEITNAUER TRADING COMPANY, LTD.,

File No. 71 Civ. 782  
(RLC)

Plaintiff,

-against-

Order to show cause on  
motion to modify income  
execution

MORTON L. ANNIS,

Defendant.

On reading and filing the annexed affidavit of  
Leslie D. Corwin, sworn to the 20<sup>th</sup> day of April, 1975, and on  
the pleadings and other papers heretofore had, filed and served  
herein let Weitnauer Trading Company, Ltd., the plaintiff and  
judgment creditor herein, show cause before this Court, at a  
Stated Term for the hearing of motions, to be held at the United  
States Courthouse, Southern District of New York, Room <sup>36</sup>~~110~~, Foley  
Square, New York, New York, on the 1<sup>st</sup> day of May, 1975 at 11  
o'clock in the AM noon or as soon thereafter as counsel can be  
heard, why an order should not be made modifying Income Execution  
with Notice to Garnishee, issued in the above entitled action on  
or about February 21, 1975, by reducing the amount to be paid

over by the employer, GENERAL CIGAR CORPORATION, to the Sheriff of New York County each month from \$2,083 to \$208.30 per month, on the ground that \$2,083 is more than 10 percent of all the monies, including any and all overtime earnings or other irregular income of the defendant, and for such other and further relief as to the Court may seem just and proper.

IT IS FURTHER ORDERED,

THAT sufficient reason appearing therefore, <sup>PERSONAL</sup> ~~that~~ service of a certified copy of this order and a copy of the papers on which it is granted upon Wikler Gottlieb Taylor & Howard, attorneys of record for plaintiff, on or before the 30<sup>th</sup> day of ~~May~~ <sup>By / f.m.</sup> ~~May~~, 1975, <sub>(April)</sub> be deemed sufficient.

DATED: NEW YORK, NEW YORK  
~~APRIL~~ APRIL 30, 1975

Robert L. Lichten  
Justice of United States District  
Court

ML

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----  
WEITNAUER TRADING COMPANY, LTD.,

Plaintiff,

-against-

MORTON L. ANNIS,

Defendant.

File No. 71 Civ. 782  
(RLC)

Affidavit in support  
of motion to modify  
income execution

-----  
STATE OF NEW YORK )

SS.:

COUNTY OF NEW YORK)

LESLIE D. CORWIN, being duly sworn, deposes and says:

1. That he is an attorney associated with the firm of Rich, Krinsly, Poses, Katz & Lillienstein, attorneys for the defendant in this proceeding and is fully familiar with all the facts and circumstances relating thereto. This affidavit is submitted in support of defendant's motion to modify income execution (execution with notice to garnishee) issued ex parte by trial counsel for the plaintiff.

2. Plaintiff is attempting here to avail itself of Rule 69 of the Federal Rule of Civil Procedure by bringing a proceeding supplementary to and in aid of its original judgment against defendant, dated June 19, 1974, in the sum of \$182,065.44. (The Court should note that this judgment was modified pursuant to an order by endorsement dated September 11, 1974, and a new

judgment filed October 2, 1974 in the sum of \$182,065.44. Appeals from both judgments are now pending; the record and appellant's brief have been filed and oral argument was heard by the Court of Appeals, Second Circuit on April 7, 1975.)

On information and belief, on or about January 21, 1975, a transcript of the judgment was docketed in the office of the County Clerk of New York County. (See Affidavit of Victor A. Kovner, Esq., sworn to February 18, 1975, annexed hereto as Exhibit "A".)

3. Rule 69(a) of the Federal Rules of Civil Procedure reads in pertinent part as follows:

"In general. Process to enforce a judgment for the payment of money shall be a writ of execution, unless the court directs otherwise. The procedure on execution, in proceedings supplementary to and in aid of a judgment, and in proceedings on and in aid of execution shall be in accordance with the practice and procedure of the state in which the district court is held, existing at the time the remedy is sought, except that any statute of the United States governs to the extent that it is applicable." (emphasis ours)

The District Court which rendered the judgment is the proper court to entertain proceedings supplementary to and in aid of the judgment or execution. U. S. ex rel Marcus v Lord Electric Co., 43 F.Supp 12 (WD Pa., 1942); Globe Indemnity Co. v Roe, 37 F.Supp. 761 (SDNY, 1941). And, subject to the proposition that any statute of the United States governs, it is clear that Rule 69 of the Federal Rules of Civil Procedure provides for

continuing conformity to State law in determining the availability of final remedies for the enforcement of a judgment. Moore's Federal Practice 2d Ed. Vol. 7, §69.04.(1974).

4. Heretofore and on or about October 7, 1974 a restraining notice to judgment debtor was issued to GENERAL CIGARS (sic) CORPORATION, 605 Third Avenue, New York, New York. A copy of said restraining notice is attached hereto, marked Exhibit "B", and made a part hereof.

5. In accordance with said restraining notice, General Cigar Corporation has refused to make any payments to the defendant since October 14, 1975, which payments defendant is entitled to under his consulting agreement with General Cigar Corporation. Attached hereto as Exhibit "C" is a copy of a letter dated October 14, 1975, from Max B. Meyer, Vice President-Secretary of General Cigar Corporation to the defendant, stating General Cigar's position with regard to the restraining notice issued by trial counsel for plaintiff.

6. That as of February 1, 1975, there was due and owing the defendant from General Cigar, the sum of \$10,416.66 under the terms of defendant's consulting agreement with General Cigar. This fact is verified by General Cigar's "Answers to Information Subpoena" filed with this Court on or about February 24, 1975. A copy of said Answers are attached hereto, marked Exhibit "D" and made a part hereof. In particular, your deponent respectfully refers the Court to Answer "3".



7. Pursuant to the terms of his consulting agreement, Mr. Annis receives approximately \$2,083 per month from General Cigar. Accordingly, there is an additional \$4,166 now due and owing from General Cigar to Mr. Annis, making a grand total of \$14,582.66.

8. That on or about February 21, 1975, an "execution with notice to garnishee" was issued by Lankenau, Kovner, Bickford, trial counsel for the plaintiff to General Cigar, upon the said judgment against "monies past due pursuant to consulting Agreement." That said execution was delivered to the Sheriff of New York County. Annexed hereto as Exhibits "E" and "F" respectfully, are copies of the execution and Sheriff's Levy by Service of Execution.

9. That said Sheriff was unable to effect service upon said judgment debtor, Mr. Annis, and as appears from Exhibit "F", on or about February 26, 1975, said income execution was presented by the Sheriff of New York County to General Cigar, and that on information and belief General Cigar is about to turn over to the said Sheriff of New York County all sums that they are presently holding in the name of Morton L. Annis.

10. That the amount to be paid pursuant to the execution is \$14,582.66, representing a per monthly amount of \$2,083 for seven months, and is more than 10 percent of any and all monies, including any and all overtime earnings, commissions, or other irregular income due and owing to the defendant each month from his employer, General Cigar. This would be directly contrary to

New York C.P.L.R. §5231(b), which states as follows:

"Where a judgment debtor is receiving or will receive more than eighty-five dollars per week from any person, an income execution for installments therefrom of not more than ten percent thereof may be issued and delivered to the sheriff of the county in which the judgment debtor resides or, where the judgment debtor is a non-resident, the county in which he is employed."

11. Furthermore, it is respectfully submitted that this Court must take judicial notice of the Federal Garnishment Laws that became effective July 1, 1970.

The Consumer Credit Protection Act (hereafter CCPA) became effective on enactment on May 29, 1968. Title III-- "Restriction on Garnishment" became effective July 1, 1970, and includes sections 301-307. It is codified as Subchapter II "Restrictions on Garnishment," Chapter 41 "Consumer Credit Protection," 15 U. S. C. §§ 1671-1677 (1968).

Under the CCPA, 15 U. S. C. § 1673(a) fixes a maximum amount subject to garnishment of:

"(1) 25 percent of his disposable earnings for that week, \* \* \*"

The leading case dealing with enforcement of the restrictive garnishment provisions of the CCPA is Hodgson v Cleveland Municipal Court, 326 F. Supp. 419 (USDC, ND Ohio, 1971). In Hodgson v Cleveland supra the United States District Court stated at pp. 429-430:

"This garnishment shield of section 1673(a) is expressly shaped to fit "any workweek,"

and that week's "disposable earnings." Use of the week as the unit for computing the maximum of disposable earnings subject to garnishment is a reasonable exercise of legislative power. Congress has determined that weekly wage earners especially need to be protected from excessive garnishment. Area wage surveys of the United States Department of Labor, received in evidence, disclose that throughout the country the overwhelming majority of plant workers are paid on a weekly basis, and a majority of office workers are paid on a weekly or bi-weekly basis. Congressional selection of an employee's weekly disposable earnings as the unit for computing his garnishment maximum is made plain in Conf.Rept.No.1397, 90th Cong.; 2d Sess. p. 2029 (1968). Headed, Title III--Restrictions on Garnishment, the Report states:

No garnishment is allowed which would exceed either 25 percent of disposable earnings, or the amount by which the weekly disposable earnings exceed 30 times the Federal minimum hourly wage, whichever is less.

This reference further reveals congressional intention to make mandatory the legislated restrictions on garnishment. It is written into law. Section 1673(a) used the phrase "may not exceed." Title V--General Provisions of the Consumer Credit Protection Act, Section 503 (not codified in the United States Code), recites "grammatical usages." In part, it states:

The phrase "may not" is used to indicate that an action is both unauthorized and forbidden.

Accordingly, garnishment procedures should never operate so as to deprive an employee of more than 25 percent of his disposable earnings paid for any one pay period. Hodgson v Hamilton Municipal Court, 349 F. Supp. 1125 (USDC, S.D. Ohio, 1972).



12. That an order to show cause is issued herein because it is necessary under Section 5231(g) of the New York CPLR, to obtain the direction of the Court as to the notice to be given to the plaintiff herein, of this motion. That upon information and belief, the said plaintiff resides at Basel, Switzerland.

13. That no previous application has been made to any court or judge for the relief asked for herein.

18  
/LESLIE D. CORWIN

Sworn to before me this

30th day of April, 1975

Notary Public

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----x  
WEITNAUER TRADING COMPANY, LTD.,

Plaintiff,

-against-

MORTON L. ANNIS,

Defendant.

File No. 71 Civ.  
782 (RLC)

AFFIDAVIT IN  
OPPOSITION

-----x  
STATE OF NEW YORK )  
                              ) SS.:  
COUNTY OF NEW YORK)

VICTOR A. KOVNER, being duly sworn, deposes and  
says:

1. He is a member of the firm of Lankenau Kovner & Bickford, trial counsel to the plaintiff in this proceeding and is fully familiar with all the facts and circumstances relating thereto. This affidavit is submitted in opposition to defendant's motion to vacate a restraining notice issued by your deponent on October 7, 1974 and served upon General Cigar Corp., 605 Third Avenue, New York, N.Y. shortly thereafter.

2. Defendant seeks to vacate the restraining notice on the grounds that, pursuant to 28 U.S.C. §1962, a Federal judgment shall not become a lien on property within a state, until the judgment is docketed in a state court, in those states which require such docketing. (In New York a money

judgment must be docketed in order to become a lien upon real property, CPLR §5203).

3. Defendant has confused the procedures for making a money judgment a lien against real property with other provisions to enforce money judgments set forth in Article 52 of the CPLR. §5222 of the CPLR sets forth the sole and explicit requirements for a restraining notice. It may be served personally or by registered or certified mail, return receipt requested; it shall specify the relevant information about the judgment and is effective to restrain the transfer of any debt or property with which the person served has custody or in which he has reason to believe the judgment debtor has an interest.

4. Unlike CPLR §5203, which sets forth the procedure by which a money judgment may be enforced against real property, there is no requirement that the judgment be docketed in the County Clerk's office. Since your deponent is not aware of any real property owned by defendant within New York State, the transcript of the judgment was not docketed. To eliminate any question, on or about January 21, 1975 a transcript of the judgment was, in fact, docketed in the office of the County Clerk of New York County.

5. A second reason offered by the defendant in support of his motion to vacate is that the restraining notice was served ex parte. §5222 (a) explicitly provides that a restraining notice may be issued by the Clerk of the Court "or the attorney for the

judgment creditor as an officer of the Court". Your deponent issued the restraining notice in accordance with law.

6. Apart from the obvious fact that the restraining notice was properly issued pursuant to CPLR §5222 and aside from the fact that the transcript of the judgment has been docketed in the office of the County Clerk, there is a further reason for the denial of plaintiff's motion - that it has been brought as part of a plan to frustrate the judgment of this Court.

7. A number of searches by credit agencies, undertaken at the request of our office, have confirmed that defendant had a net worth in excess of \$1,000,000 in 1971, at the time this action was initiated, and another agency confirmed this fact in mid-1974.

8. On January 31, 1975 your deponent took the deposition of the defendant in Tampa, Florida as part of supplementary proceedings to enforce the judgment of this Court. Under oath, the defendant stated that since February 23, 1971, the date this action was instituted, he has made the following transfers of property to members of his immediate family:

- (a) Gifts of approximately \$70,000 within the past three or four years.
- (b) An assignment to his son of all the defendant's stock and notes in Master Packaging Co. (an interest which he acquired for over \$100,000 in 1973 and of which company he is Chairman of the Board and derives \$35,000 a year in consulting income).

The defendant claims this assignment was intended to repay a "loan" from his son made in 1970.



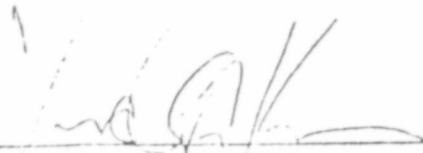
9. In addition, he testified that in 1972 he sold six Renoir paintings for an aggregate of \$160,000, but cannot recall the dealers to whom they were sold nor the disposition of the proceeds of such sales. In addition, he testified that in 1972 and 1973 he sold an aggregate of 10,000 shares of General Cigar stock for an aggregate price of between \$200,000 and \$250,000, but that he cannot recall where the proceeds of such sales were deposited. He further testified that in 1973, when he purchased a 25% interest in Master Packaging Co., a company which incurred indebtedness of nearly \$2,000,000 principally from banks, that the defendant personally guaranteed obligations of Master Packaging in the amount of \$450,000. He further testified that he could not recall whether or not Richard Turkel, the President of Master Packaging and the owner of a majority of its outstanding shares, also personally guaranteed these obligations (a failure of recollection reminiscent of the defendant's testimony in connection with the Intercontinental guarantee).

10. Although this affidavit is not the appropriate forum to summarize fully the testimony of defendant, and indeed a further examination will be held shortly, during settlement negotiations initiated by the Clerk of the Court of Appeals, defendant and his counsel have asserted that defendant has virtually no assets and cannot pay more than a fraction of the judgment. The pending motion to vacate the restraining notice must be viewed in the context of the gifts and transactions with family members while the litigation was pending, which purportedly have altered

33A

defendant's status from that of a millionaire to a person of extremely limited assets.

WHEREFORE, your deponent respectfully requests that the motion be denied in all respects.

  
VICTOR A. KOVNER

Sworn to before me this  
18th day of February, 1975

ANGELA CARAVIOTIS, Notary Public  
State of New York, No. 03-1019276  
Qualified in Bronx County  
Cert. Filed in New York County  
Commission Expires March 30, 1975

WEITNAUER TRADING COMPANY, LTD.,

Plaintiff

against

MORTON L. ANNIS,

Defendant

RESTRAINING NOTICE  
TO JUDGMENT DEBTOR

The People of the State of New York

TO GENERAL CIGARS CORP., 605 Third Avenue,  
New York, New York 10016

judgment debtor

GREETING:

WHEREAS, in an action in the U.S. District Court of Southern District of New York  
between

WEITNAUER TRADING COMPANY, LTD.,

as plaintiff and

MORTON L. ANNIS,

as defendant

who are all the parties named in said action, a judgment was entered on June 19,  
in favor of WEITNAUER TRADING COMPANY, LTD.,

1974

judgment creditor and against

MORTON L. ANNIS,  
in the amount of \$182,065.44  
from March 1,

of which \$182,065.44  
1971 remains due and unpaid;

judgment debtor  
together with interest thereon

TAKE NOTICE that pursuant to subdivision (b) of Section 5222 of the Civil Practice Law and Rules,  
which is set forth in full herein, you are hereby forbidden to make or suffer any sale, assignment or transfer of,  
interference with any property in which you have an interest, except as therein provided.

CIVIL PRACTICE LAW AND RULES

Section 5222(b) Effect of restraint; prohibition of transfer; duration. A judgment debtor served with a restraining notice is forbidden to make or suffer any sale, assignment, transfer or interference with any property in which he has an interest, except upon direction of the sheriff or pursuant to an order of the court, until the judgment is satisfied or vacated. A restraining notice served upon a person other than the judgment debtor is effective only if, at the time of service, he owes a debt to the judgment debtor or he is in the possession or custody of property in which he knows or has reason to believe the judgment debtor has an interest, or if the judgment creditor has stated in the notice that a specified debt is owed by the person served to the judgment debtor or that the judgment debtor has an interest in specified property in the possession or custody of the person served. All property in which the judgment debtor is known or believed to have an interest then in and thereafter coming into the possession or custody of such a person, including any specified in the notice, and all debts of such a person, including any specified in the notice, then due and thereafter coming due to the judgment debtor, shall be subject to the notice. Such a person is forbidden to make or suffer any sale, assignment or transfer of, or any interference with, any such property, or pay over or otherwise dispose of any such debt, to any person other than the sheriff, except upon direction of the sheriff or pursuant to an order of the court, until the expiration of one year after the notice is served upon him, or until the judgment is satisfied or vacated, whichever event first occurs. A judgment creditor who has specified personal property or debt in a restraining notice shall be liable to the owner of the property or the person to whom the debt is owed, if other than the judgment debtor, for any damages sustained by reason of the restraint. If a garnishee served with a restraining notice withholds the payment of money belonging or owed to the judgment debtor in an amount equal to twice the amount due on the judgment, the restraining notice is not effective as to other property or money.

TAKE FURTHER NOTICE that disobedience of this Restraining Notice is punishable as a contempt of court.

Dated: October 7, 1974

The name signed must be printed beneath

LANKENAU KOVNER BICKFORD & BEER

Exhibit B

Trial Attorney(s) for Judgment Creditor  
Office and Post Office Address  
30 Rockefeller Plaza

New York, New York 10020

State of New York, County of \_\_\_\_\_

ss:

U.S. DISTRICT COURT

being duly sworn, deposes and says: that deponent is not a party to the action, is over 18 years of age and resides at \_\_\_\_\_

U.S. DISTRICT COURT  
SOUTHERN DISTRICT  
OF NEW YORK

This on the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_

WILHELM TRADING COMPANY,  
LTD.,

On the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_

deponent served the within Forfeiting Notice on \_\_\_\_\_

judgment debtor by mailing a copy of same in a securely sealed post paid wrapper properly addressed to the judgment debtor at \_\_\_\_\_

whereafter (1) & (2)

(1) judgment debtor therein named by delivering a true copy of said judgment debtor personally; deponent knew the person so served to be the person described as said judgment debtor therein.

Plaintiff

against  
MORTON L. SMITHS,

(2) \_\_\_\_\_ corporation, judgment debtor therein named, by delivering a true copy to \_\_\_\_\_ personally, deponent knew said corporation so served to be the corporation described in said restraining notice as said judgment debtor, and knew said individual to be \_\_\_\_\_

Sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_

19\_\_\_\_ }

Defendant

Sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_ }

FORFEITING NOTICE  
TO JUDGMENT DEBTOR

Enforcement of Money Judgment

LEONARD KOWNER DICKFORD & BEER

Trial Attorney(s) for Judgment Creditor

Office and Post Office Address  
30 Rockefeller Plaza  
New York, New York 10020



October 14, 1974

Mr. Morton L. Arvis  
108 Martindale  
Tampa, Florida

Dear Morty:

You are undoubtedly aware that in an action before the United States Court for the Southern District of New York in the case of Weitnauer Trading Company, Ltd. against you the Court issued a "Restraining Notice to Judgment Debtor" to General Clear. According to counsel this restraining notice makes it impossible for us to continue to make any payments to you until it has been vacated.

For your information, I am enclosing a photo copy of the notice. Please let us know if there is any change in this legal situation so that we can resume payments.

Best personal regards.

Sincerely yours,



Max B. Meyer  
Vice President-Secretary

cc: Messrs. Elias Arnesen  
Ther. Kaufmann  
Philip Schneer

Ms. E. Kauerling

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

----- x  
WEITHAUER TRADING COMPANY, LTD., :

Plaintiff, :

-against- :

MORTON L. ANNIS, :

Defendant. :

ANSWERS TO  
INFORMATION  
SUBPOENA

71 Civ. 782 (RLC)

----- x

GENERAL CIGAR CO. INC. ("General Cigar"), as and for its answers to the Information Subpoena served on it on January 10, 1975, states for the period January 1, 1969 to present:

1. Upon information and belief, in 1969 Morton L. Annis owned 20,000 shares of General Cigar common stock and held 50,180 shares of common stock as Executor of an estate in which he had no beneficial interest and 4,460 shares of common stock as trustee of a trust in which he had no beneficial interest.

In 1970, Mr. Annis' position continued as above and, in addition, General Cigar held for the account of Mr. Annis 2,167 shares of common stock pursuant to a deferred compensation plan.

In 1971, the shares held by General Cigar pursuant to the deferred compensation plan increased to 2,499 shares. Mr. Annis also held as contingent beneficiary of a trust 30,180 shares of common stock. Mr. Annis also held 2,230 shares as trustee of a trust in which he had no beneficial interest. During that year Mr. Annis sold a total of 10,000 shares of common stock in the months of June and July. Mr.

Annis' rights to the shares held pursuant to the deferred compensation plan were terminated on June 10, 1971.

In December, 1972 Mr. Annis sold the remaining 10,000 shares of common stock owned by him.

Upon information and belief Morton L. Annis has no present interest by way of common stock, preferred stock, debentures, bonds or the like in General Cigar or any subsidiary or affiliated entity.

2. Mr. Annis was Senior Vice President and a Director of General Cigar until retirement on June 30, 1971. Commencing on July 1, 1971 and continuing to present Mr. Annis has acted as a consultant to General Cigar pursuant to a contract dated June 10, 1971, a copy of which is annexed hereto. The terms of his compensation are set forth therein.

3. Upon information and belief General Cigar's present indebtedness to Mr. Annis is as follows: Under the consulting contract: \$10,416.66 as of February 1, 1975.

Under the retirement plan: All retirement income is contingent upon Mr. Annis' reaching age 65. At age 65 Mr. Annis will receive \$7,959.00 per annum for life plus a pension differential (provided the consulting contract is not prior terminated) of \$2,041.00 per annum for life. There are no survivor benefits.

4. Upon information and belief no further sums are presently due Mr. Annis from General Cigar.

Dated: New York, New York  
February 24, 1975

Yours, etc.

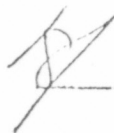
MUDGE ROSE CUTHRIE & ALEXANDER  
Attorneys for General Cigar  
20 Broad Street  
New York, New York 10005  
(212) 422-6767

VERIFICATION

STATE OF NEW YORK )  
                              : ss.:  
COUNTY OF NEW YORK )

HENRY D. WHITEHILL, being duly sworn, deposes and  
says:

I am Secretary of the General Cigar Co., Inc.; I  
have read the foregoing Answers to Information Subpoena and  
know the contents thereof. The same is true to my own  
knowledge, except as to matters therein stated to be upon  
information and belief and as to those matters I believe it  
to be true.



Henry D. Whitehill

Sworn to before me this  
28<sup>th</sup> day of February 1975



Notary Public



WEITHAUER TRADING COMPANY, LTD.,

Plaintiff

against

MORTON L. ANNIS

Defendant

EXECUTION  
WITH NOTICE TO  
GARNISHEE

The People of the State of New York

TO THE SHERIFF OF ANY COUNTY, GREETING:

WHEREAS, in an action in the United States District Court, Southern District of New York, between Weithauer Trading Company, Ltd.

as plaintiff and  
as defendant

who are all the parties named in said action, a judgment was entered on September 11, 19 74 in favor of Weithauer Trading Company, Ltd.

judgment creditor  
judgment debtor

and against Morton L. Annis whose last known address is 108 Martinique Avenue, Tampa, Florida in the amount of \$ 132,065.44 including costs, of which \$132,065.44 with interest thereon from March 1, 1971 remains due and unpaid; and together

WHEREAS, a transcript of the judgment was filed on January 23, 19 75 with the Clerk of the County of New York, in which county the judgment was entered; and

WHEREAS, a transcript of the judgment was docketed in the office of the Clerk of your county on January 23, 19 75

NOW, THEREFORE, WE COMMAND YOU to satisfy the said judgment out of the real and personal property of the above named judgment debtor and the debts due to him; and that only the property in which said judgment debtor who is not deceased has an interest or the debts owed to him shall be levied upon or sold hereunder; AND TO RETURN this execution to the clerk of the above captioned court within sixty days after issuance unless service of this execution is made within that time or within extensions of that time made in writing by the attorney(s) for the judgment creditor

## Notice to Garnishee

TO: General Cigar Corporation

ADDRESS: 605 Third Avenue, New York, N.Y.

WHEREAS, it appears that you are indebted to the judgment debtor, above named, or in possession or custody of property not capable of delivery in which the judgment debtor has an interest, including, without limitation, the following specified debt and property:

Moneys past due pursuant to consulting Agreement.

NOW, THEREFORE, YOU ARE REQUIRED by section 5232(a) of the Civil Practice Law and Rules forthwith to transfer to the sheriff all property not capable of delivery in which the judgment debtor is known or believed to have an interest now in or hereafter coming into your possession or custody including any property specified in this notice; and to pay to the sheriff, upon maturity, all debts now due or hereafter coming due from you to the judgment debtor, including any debts specified in this notice; and to execute any documents necessary to effect such transfer or payment;

AND TAKE NOTICE that until such transfer or payment is made or until the expiration of ninety days after the service of this execution upon you or such further time as is provided by any order of the court served upon you, you shall be prohibited from making or suffering any sale, assignment or transfer of or any interference with, any such property, or pay over or otherwise dispose of any such debt, to any person other than the sheriff, except upon direction of the sheriff or pursuant to an order of the court;

AND TAKE FURTHER NOTICE THAT at the expiration of ninety days after a levy is made by service of this execution, or of such further time as the court upon motion of the judgment creditor has provided, this levy shall be void except as to property or debts which have been transferred or paid to the sheriff or as to which a proceeding under sections 5225 or 5227 of the Civil Practice Law and Rules has been brought.

this 21st day of February 19 75 .

Justice of the U.S. District Court,

(Signature)

Lawson Brown, Esq.

Attorney for Judgment Creditor  
Office and Post Office Address  
30 Rockefeller Plaza  
New York, N.Y. 10020

## ENDORSEMENT

Please take notice that the following named defendants were not served with a summons herein, viz.:

Index N71 Civ. 782 (RLC)

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

WEITZNER TRADING COMPANY, LTD.

Plaintiff  
against

MORTON L. ANNIS

Defendant

And that, as to them, the execution must be re-  
traced as below prescribed.  
An execution against property shall not be levied  
on the sole property of such a defendant, but it  
may be collected out of real and personal property  
owned by him jointly with the other defendants who  
are summoned, or with any of them, and out of the  
real and personal property of the latter or any of  
them.

Attorney's fee

Name and Address of Garnishee

Sheriff of any County

Levy and collect within directed

\$182,065.44

with interest from March 1, 1971  
besides your fees, etc.

LEONARD KOVNER & BICKFORD

Attorney(s) for Judgment Creditor  
30 Rockefeller Plaza, N.Y.C.

Dated and time received

Address of Judgment Debtor

Sheriff

Location of Property

SHERIFF'S LEVY BY SERVICE OF EXECUTION

**LEVY:** I HEREBY LEVY to the extent necessary to satisfy the judgment with interest, sheriff's fees and expenses on any interest of the judgment debtor named in the copy of Execution served upon you herewith in all personal property not capable of delivery which is in your possession or custody and upon any debt you owe to the judgment debtor, not specifically exempt from levy by law. This includes but is not limited to a partnership interest, an interest in a decedent's estate or in any property or fund held or controlled by a fiduciary, and any right of share in the stock of an association or corporation for which a certificate of stock is not outstanding, together with interest dividends or profits accruing thereon and therefrom.

**EFFECT OF LEVY:** This levy affects any existing debt, which is past due, currently due or yet to become due, certainly or upon demand of the judgment debtor, wherever incurred, including any cause of action which the judgment debtor can assign or transfer wherever accruing, and any existing interest of the judgment debtor in personal property not capable of delivery which the judgment debtor can assign or transfer, whether it consists of a present or future right or interest and whether or not it is vested, including any debt or personal property not capable of delivery specified in a notice accompanying the Execution; and, it also affects the judgment debtor's interest in personal property not capable of delivery hereafter coming into your possession or custody and all debts hereafter coming due from you to the judgment debtor, until you pay or transfer the debt or property to the Sheriff.

**YOU ARE FORBIDDEN BY LAW**, for ninety days after this service and for such additional time as the Court by order may provide, to transfer, pay over, or otherwise dispose of the debt or property so levied upon as hereinbefore specified to any person other than the Sheriff, except by written direction of the Sheriff. The Sheriff has and claims a lien upon the levied property for his statutory fees and poundage.

**DEMAND:** 1. I HEREBY DEMAND that you furnish me forthwith with a STATEMENT, IN DUPLICATE, specifying the amount and nature of any and all such property of the judgment debtor, including the maturity dates of debts. If you do not, you are subject to examination under oath by direction of the Court.

2. I HEREBY FURTHER DEMAND that you forthwith transfer all such property and pay over to me all such debts upon maturity, and execute any document necessary to effect the transfer or payment. If you do not, you are subject to suit by the judgment creditor to recover such property or the amount of your indebtedness, obligation or other accountability with costs and expenses.

**DISCHARGE:** Such payment or transfer shall discharge you from your obligation to the judgment debtor to the extent of the payment or transfer. **THE AMOUNT OF \$**

**POUNDAGE AND INTEREST TO** WHICH INCLUDES SHERIFF'S FEES, **IS NECESSARY TO SATISFY THE**

**EXECUTION.** Make checks payable to the Sheriff, City of New York, and indicate the name of the case when remitting.

Dated, the 26<sup>th</sup> day of February 1975

Dante J. Baiello, Deputy Sheriff

Deputy Sheriff  
566-

PLEASE REPLY TO THE DEPUTY SHERIFF

H. WILLIAM KEHL  
Sheriff of the City of New York

JOSEPH P. BRENNAN  
Under Sheriff, in Charge  
New York County Division  
31 Chambers Street  
New York, N. Y. 10007

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
WEITNAUER TRADING COMPANY, LTD., :

Plaintiff, :

- against - :

71 Civ. 782 (RLC)

MORTON L. ANNIS, :

AFFIDAVIT

Defendant. :

-----X

STATE OF NEW YORK )

: ss.:

COUNTY OF NEW YORK )

WILLIAM P. LAINO, being duly sworn deposes and

says:

1. I am associated with the firm of Mudge Rose Guthrie & Alexander, attorneys for General Cigar Co., Inc. ("General Cigar"), which was served as garnishee with the execution which is the subject of defendant's motion herein. I am a member of the bar of this Court and make this affidavit in response to defendant's motion to modify said execution.

2. General Cigar is a stakeholder in this proceeding and takes no position with respect to defendant's motion to modify the execution served upon General Cigar. The purpose of this affidavit is to provide this Court with the appropriate facts relating to the nature and amount of monies owed to defendant and held by General Cigar as garnishee so that this Court may determine to whom and in what amounts General Cigar should pay such funds now being held and to be held by it.



3. As set forth in paragraphs 2 and 3 of General Cigar's Answers to Information Subpoena, commencing on July 1, 1971 and continuing to present, defendant has acted as a consultant to General Cigar pursuant to a contract dated June 10, 1971 (See Exhibit D to Affidavit of Leslie D. Corwin dated April 30, 1975).

4. Pursuant to the consulting contract, which is annexed hereto as Exhibit "A", defendant is paid compensation at a rate of \$25,000.00 per annum in semi-monthly installments payable on the fifteenth and last day of each month.

5. On October 7, 1974, General Cigar was served by plaintiff's attorneys with a Restraining Notice to Judgment Debtor which purported to restrain all of defendant's property. Accordingly, General Cigar began escrowing defendant's semi-monthly payments commencing with the installment due October 15, 1974.

6. On February 26, 1975, Dante J. Baietto, Deputy Sheriff of the City of New York, served an Execution on General Cigar in connection with a judgment in favor of plaintiff against defendant herein. In response to an inquiry by Deputy Baietto, General Cigar informed him that as of February 1, 1975, it held \$10,416.66 for the defendant in payment pursuant to the aforesaid consulting contract. On April 1, 1975, Deputy Baietto demanded payment to him of the entire amount of \$10,416.66 including such other of defendant's property or debts owed to him which were held or owed by General Cigar as of that date. A copy of Deputy Baietto's letter is annexed hereto as Exhibit "B". General Cigar has not paid any money to the Sheriff pursuant to the execution or the demand of Deputy


Baietto. General Cigar is continuing to escrow the payments due defendant pursuant to the consulting contract and will hold such funds subject to the order of this Court.

7. The following information is provided for the convenience of the court:

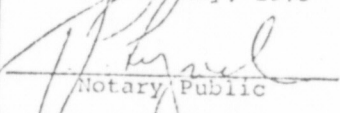
(a) The total amount of payments due defendant under the consulting contract which are being held in escrow by General Cigar as of May 1, 1975 is \$14,583.35.

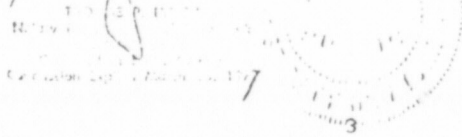
(b) The gross and net amount payable to defendant pursuant to the consulting contract is \$1,041.67 on the fifteenth and \$1,041.66 on the last day of each month for a total each month of \$2,083.33. General Cigar makes no deductions from this amount for taxes, social security or other purposes.

WHEREFORE, your deponent prays that this Court determine which, if any, of the monies now held by General Cigar for defendant is exempt from satisfaction of a money judgment under applicable Federal and State laws, and that it issue an order directing the specific amount of such monies to be paid by General Cigar pursuant to the Execution served upon it and the persons to whom such amounts are to be paid.

  
WILLIAM P. LAINO

Sworn to before me this  
day of May, 1975

  
Notary Public



June 10, 1971

Morton L. Annis, Esq.  
General Cigar Co., Inc.  
605 Third Avenue  
New York, N. Y. 10016

Dear Mr. Annis:

We have given consideration to your expressed wish to be less active in the affairs of the Company and that of its subsidiaries so that you may have more time to devote to other interests as evidenced in part by your resignation as a Director and Officer of General Cigar Co., Inc. and of its subsidiaries and we have discussed with you the desire of the Company, in view of your long and valued service and familiarity with its affairs, to have the continued benefit of your counsel and advice for the period and upon the terms stated below.

1. Termination of Employment Agreement and Rights Thereunder

All your rights, and all obligations to be performed by the Company, under the Employment Agreement dated August 7, 1964 between you and the Company, as amended by the amendments of November 26, 1968 and March 5, 1970, including any and all obligations on the part of the Company for future payments of Basic Salary and Deferred Compensation thereunder, whether accrued prior to or after the date hereof, shall be terminated and you shall have no rights to receive payment of any thereof.

2. Consulting Period

Commencing July 1, 1971 you will be retained by the Company as a Consultant with a compensation at the rate of \$25,000 per annum, payable on the first day of each month, for a term commencing on that date and continuing until the earliest of (i) your 65th birthday, which you represent to be March 24, 1982, (ii) your death prior thereto, or (iii) termination as provided in Section 7.

EXHIBIT A

### 3. Pension Differential

Commencing on the date of your 65th birthday, provided you are then living and if payments under this Agreement have not been terminated prior thereto, and continuing until the date of your death, the Company will pay, or cause to be paid to you, an amount per annum equal to the difference between \$10,000 and the maximum amount which you could receive under the terms of the Employees Retirement Plan, as then amended, of the Company on retirement at age 65.

### 4. Services

During the Consulting period you agree to devote to the business and affairs of the Company, its subsidiaries and affiliated companies, such time and attention as may reasonably be required up to a maximum of 60 business days in any 12-month period commencing July 1, 1971, or any anniversary thereof. Reasonable advance notice requesting services will be given to you and no demands will be made upon you under this Agreement during any four calendar weeks of each year as chosen by you. You shall be reimbursed by the Company for all traveling and incidental expenses incurred by you in connection with the performance of such services. Although a permanent office will not be assigned to you, suitable office space and stenographic and secretarial assistance will be provided for you at such time as you are rendering services hereunder.

### 5. Trade Secrets

During the period in which you are receiving payments under this Agreement and at all times thereafter, you will reasonably preserve and safeguard and, except as may otherwise be permitted by the Company, refrain from publishing, disclosing or disseminating, directly or indirectly, to any present or future, actual or potential, competitor of the Company or any other person or entity any trade secrets, data, formulae, processes, techniques, special equipment, materials or combinations thereof not theretofore known or available to the industry or state of the art or the public generally, in default of which the Company shall be entitled to an injunction, and other equitable relief, and may also, at its election, terminate its payments hereunder.



## 6. Competitive Employment

During the period in which you are receiving payments under this Agreement you will not, without the consent of the Company, which shall not be unreasonably withheld, accept employment or render service to any person, firm or corporation in competition with the Company or any of its present subsidiaries or affiliates, or engage in any business in which the Company or any of its subsidiaries or affiliates is engaged, or enter into, or in any manner take part in, or lend your name, counsel or assistance to, any venture, enterprise, business or endeavor either as a proprietor, principal, investor, partner, director, officer, employee, consultant, advisor, agent, independent contract or in any other capacity whatsoever, for any purpose which would be competitive with any business in which the Company or any of its subsidiaries or affiliates is presently engaged, such business including, without limiting the generality of the foregoing, the growing, sorting, processing, manufacture, advertising, distribution and sale of tobacco, cigars, cigarillos, cigarettes, and any other tobacco products, or products in which tobacco is a constituent element or which are produced or sold in association with tobacco products. / Notice in writing of your intention to enter upon or engage in any such activities, specifying such activities in reasonable detail, shall be given to the Company. Failure of the Company to reply thereto within 15 days after the receipt of such notice shall be deemed to be consent thereto by the Company. If the Company gives you notice in writing that it does not consent thereto, you shall refrain from entering into such activities, in default of which the Company shall be entitled to equitable relief in the form of an injunction against any breach of the foregoing covenants or, at its election, may terminate payments hereunder. / The foregoing provision shall not prohibit your entering into the business of manufacturing or marketing of clothing or alcoholic products or making investments in any securities listed on the New York or American Stock Exchanges in amounts not exceeding 5% of any single class of such securities outstanding, nor your making investments of any nature in any securities of this Company or in any subsidiary thereof without limitation as to value or amount.

## 7. Termination

(a) The Company, on authorization of its Board of Directors, may terminate its payments under this Agreement at any time for serious cause which shall include, but not be limited to, your willful failure to perform services hereunder or your violations or any of the provisions of this Agreement, including Sections 5 and 6.

(b) If, for any reason, you become incapacitated to perform the consulting services contemplated by this Agreement and if such incapacity shall continue for six months or more, the Board of Directors may terminate the payments of the Company under this Agreement.

8. Notice

Any notices, requests or communications to you will be deemed duly given or sent for the purposes hereof, if sent to you by mail addressed to you at P. O. Office Box 1531, Tampa, Florida, or such other address you may designate in writing to the Company.

This letter has been executed by the Company pursuant to authority of the Board of Directors and when accepted by you will constitute an Agreement between us and shall be binding upon, and inure to the benefit of, you and your heirs and legal representatives, assigns or creditors, and shall be binding upon and inure to the benefit of, the Company and its successors and assigns, whether by consolidation, merger, sale of assets, or otherwise, and such successors and assigns shall expressly accept and agree to carry out the provisions hereof.

If the foregoing terms and conditions correctly embody your mutual understanding with the Company, kindly endorse your acceptance and agreement therewith in the space below provided, whereupon this shall become a binding Agreement between us.

Very truly yours,

GENERAL CIGAR CO., INC.

By: \_\_\_\_\_  
Edgar M. Cullman, President

Accepted and agreed to  
as of the date first above  
set forth.

\_\_\_\_\_  
Morton L. Annis

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

50A

-----X  
WEITNAUER TRADING COMPANY, LTD.,

Plaintiff-Judgment Creditor,

-against-

MORTON L. ANNIS,

Defendant-Judgment Debtor,  
-----X

NOTICE OF CROSS-MOTION

Docket No. 71 Civ. 782  
(RLC)

S I R S :

PLEASE TAKE NOTICE, that upon the annexed affidavit of Victor A. Kovner, sworn to May 1, 1975, and upon the transcripts of the examinations of Morton L. Annis, defendant-Judgment Debtor, held January 31 and April 4, 1975, pursuant to subpoena and upon the Judgment duly entered in the United States District Court for the Southern District of New York on September 11, 1974, and upon all the pleadings and proceedings heretofore had herein, the undersigned will cross-move this Court at a stated term for the hearing of Motions to be held at the United States Courthouse, Southern District of New York, Room 36, Foley Square, New York, New York, on the 7th day of May, 1975, at 10 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard, for an order pursuant to Rule 69A of the Federal Rules of Civil Procedure and pursuant to §5226 of the New York Civil Practice Law and Rules, directing the above named judgment creditor, in installments the sum of Five Thousand (\$5,000.00) Dollars per month, from all income however or whenever earned or acquired or the reasonable value of the services rendered if rendered without adequate

- 51A

compensation, including but not limited to all consulting income derived from General Cigar Corporation or Master Packaging Corporation, on the ground that the said judgment debtor is capable and able to regularly make such payment toward his indebtedness and for such other, further and different relief as to this Court may seem just and proper.

YOURS, etc.,

LANKENAU KOVNER & BICKFORD  
Attorneys for Plaintiff-Judgment  
Creditor

By: S/VICTOR A. KOVNER

A Member of the Firm

Office & P. O. Address:  
30 Rockefeller Plaza  
New York, New York 10020

TO: RICH, KRINSKY, POSES,  
KATZ & LILLIENSTEIN, ESQS.  
Attorneys for Defendant-  
Judgment Debtor  
99 Park Avenue  
New York, N.Y. 10016



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

52A

-----x  
WEITNAUER TRADING COMPANY, LTD.,

Plaintiff-Judgment Creditor,

-against-

MORTON L. ANNIS,

Defendant-Judgment Debtor,

AFFIDAVIT IN OPPOSITION  
TO MOTION TO MODIFY EX-  
ECUTION AND IN SUPPORT  
OF CROSS-MOTION TO DI-  
RECT INSTALLMENT PAYMENTS

Docket No. 71 Civ. 782  
(RLC)

-----x  
STATE OF NEW YORK )  
: ss.:  
COUNTY OF NEW YORK )

VICTOR A. KOVNER, being duly sworn, deposes and says:

1. I am a member of the firm of Lankenau, Kovner & Bickford, trial counsel to Plaintiff-Judgment Creditor (hereinafter referred to as "Plaintiff") in this proceeding and am fully familiar with all the facts and circumstances relating thereto. This affidavit is submitted in opposition to the motion of Defendant-Judgment Debtor (hereinafter referred to as "Defendant") to modify the execution previously served and in support of the cross-motion of Plaintiff to direct Defendant to pay the Plaintiff in installments the sum of \$5,000.00 per month from all income earned by the Defendant, until the amount of the judgment plus all interest accrued has been paid.

Prior Proceedings

2. This action was commenced on March 1, 1971, based upon the Defendant's execution of a guarantee dated September 30, 1969, which was subsequently amended in January, 1970. After a two-day trial in October 1973, a decision in favor of Plaintiff

was filed on June 19, 1974, and a judgment in favor of the Plaintiff against Defendant was duly entered on September 19, 1974, in the amount of \$182,065.44 together with interest.

3. Although Defendant's appeal to the Court of Appeals is now sub judice (having been argued on April 7, 1975), Defendant has taken no steps to seek a stay of enforcement of the judgment pending determination of the appeal.

4. On October 4, 1974, your deponent served a restraining notice, pursuant to Article 52 of the New York Civil Practice Law and Rules, upon General Cigar Corp. ("General Cigar"). On January 8, 1975, Defendant moved to vacate said restraining notice, and after the submission of an affidavit in opposition by your deponent sworn to February 18, 1975, that motion was submitted and is now sub judice.

5. On January 30, 1975, your deponent served an information subpoena upon General Cigar, and Answers to the aforesaid questions, verified February 28, 1975, were duly served on your deponent by General Cigar, a copy of which is annexed to Defendant's moving papers as Exhibit D. In 13 of the Answers, General Cigar Corp. stated that it was indebted to the Defendant in the sum of \$10,416.66 as of February 1, 1975. According to the moving affidavit of Mr. Corwin, the amount due from General Cigar to defendant now aggregates \$14,582.66.

6. As soon as your deponent was advised by William P. Laino, Esq., counsel to General Cigar of the substance of the Answers to the information subpoena (shortly before those Answers were actually received), your deponent prepared an execution with notice to garnishee, which was forwarded to the Office of the Sheriff of New York County and served shortly

thereafter (a copy of said execution is annexed as Exhibit E to the Defendant's moving papers).

7. On or about April 1, 1975, your deponent was informed by Mr. Laino that General Cigar would honor the execution served upon it by the Sheriff and turn over the monies due by it to Mr. Annis to the Sheriff, pursuant to said execution.

8. On or about April 28, 1975, your deponent was informed by Mr. Laino that his senior partner in charge of the General Cigar legal work preferred not to honor the execution until there was a judicial determination with respect to the propriety of the execution. Just as your deponent was preparing motion papers seeking the relief sought in this cross-motion, your deponent received the Order to Show Cause dated April 30, 1975.

#### Examinations of Defendant

9. Pursuant to subpoena, examinations of defendant relating to his assets were taken by your deponent on January 31 and April 4, 1975 in Tampa, Florida (copies of which are submitted herewith). During the course of those examinations, Defendant acknowledged participating in a series of transactions, which in your deponent's view were clearly designed to frustrate any judgment which might be made by this Court.

10. Among the transactions acknowledged by Defendant are the following:

(a) he made gifts of approximately \$70,000 to members of his immediate family within the past three or four years; (D-18-19)\*

(b) On July 1, 1974, less than two weeks following the decision of this Court, Defendant assigned to his son, Morton L. Annis, Jr., all of his stock in Master Packaging Co. ("Master Packaging") (a company in which he invested at least \$100,000 in 1973), together with a note from Master Packaging in the amount of \$50,000. (D-33-34). Significantly, in financial statements given to Tampa banks in May 1974, the Defendant valued his equity in Master Packaging at \$600,000 (Exhibit A). The defendant claimed that this assignment was intended to repay a "loan" of \$98,000 from his son made in 1970, made by the Defendant from a trust of which he was a trustee (D-34) and in part the settlor (D-36). Of course, in the various financial statements given to banks in 1971-74\*\* no indication of any indebtedness to Defendant's son is mentioned:

(c) In 1972 he sold six Renoir paintings

---

\* References to the examination of Defendant of 1/31/75 are cited as D-4, etc., and to the examination of 3/21/75 as 2D-4, etc.

\*\* The four financial statements given to the Tampa banks are annexed hereto as Exhibits A through D.



for an aggregate of \$160,000 but Defendant cannot recall the dealers to whom they were sold nor the disposition of the proceeds of such sales; (D-56)

(d) In 1972 and 1973 he sold an aggregate of 20,000 shares of General Cigar stock for an aggregate price of \$489,988.15, but he cannot recall where the proceeds of such sales were deposited; (D-55)

(e) In 1973, when he purchased a 25% interest in Master Packaging Co., a company which incurred indebtedness of nearly \$2,000,000., principally from banks, Defendant personally guaranteed obligations of Master Packaging in the amount of \$450,000. He further testified that he could not recall whether or not Richard Turkel, the President of Master Packaging and the owner of a majority of its outstanding shares, also personally guaranteed these obligations (a failure of recollection reminiscent of the defendant's testimony in connection with the Intercontinental guarantee).

11. While announcing to your deponent and to the Clerk of the Court of Appeals, through his attorneys, that he had insufficient assets with which to pay the judgment or any significant portion thereof, the examinations reveal that he acknowledged that he was currently earning \$60,000 per year (a) \$25,000 pursuant to a consulting agreement with General Cigar Corp. (D-51) and (b) \$35,000 per year pursuant to a consulting

agreement with Master Packaging Co., (D-43) the company of which he became co-principal and Chairman of the Board in 1973.

12. Defendant also testified that his compensation of \$35,000 a year from Master Packaging as marketing consultant had been stopped as of the autumn of 1974 pursuant to "new negotiations now in process" (D-43), although he acknowledged that the \$35,000 a year consulting agreement remained in effect.

13. Following receipt of the original transcript your deponent received "corrections" to the deposition of January 31, 1975, from the defendant's attorney annexed hereto as Exhibit E. These "corrections" including the statement that "this contract [the Master Packaging consulting agreement] is no longer with Morton L. Annis, Sr., it has been assigned to Astrometric."

14. The fraudulent nature of this belated amendment to defendant's testimony is confirmed by the fact that the defendant previously testified that prior to the deposition of January 31, 1975, he had sold all his interest in Astrometric, a company of which he was co-owner (D-5). Furthermore, the person to whom his interest was allegedly sold is Mrs. Riffe, the defendant's personal secretary (D-28). Obviously, this belated amendment is merely a further effort to frustrate enforcement of this Court's judgment. Furthermore, on April 4, defendant testified:

"because of the state of my health it would be better for me to make some changes and have some money paid not to me as an individual so much and to put it in with a whole new concept, which I have not really developed yet."

Defendant's Living Circumstances

15. Defendant has testified that both of his children are now mature (Morton L. Annis, Jr., age 31 and Susan Ehrens age 27 and reside in New York and Colorado respectively). Defendant resides with his wife at a home (he valued at \$250,000 in May 1974) on an island near Tampa, Florida, which is owned by both of them free and clear and not subject to mortgage. Defendant further testified that his wife own's one automobile and that he rents additional automobiles and, in addition he and his wife rent an apartment on the East side of Manhattan.

16. Most significantly in the financial statements delivered to the Tampa banks signed by the defendant as of May 30, 1974, he represented that a net worth of \$1,977,000 (Exhibit A). Included in this financial statement were the fact that he owned paintings by Renoir and Toulouse Lautrec valued at \$145,000; antiques valued at \$118,000; furs and jewelry valued at \$103,000; furnishings in Tampa and New York valued at \$45,000 (in addition to his various business investments said financial statement indicated that he owned thoroughbred horses valued at \$30,000). Clearly, the lifestyle of defendant warrants the direction of this Court that the monthly payments currently due from Master Packaging and General Cigar Corp., in the aggregate amount of \$60,000 per annum be paid over at the rate of \$5,000 per month until the judgment is satisfied, together with the \$14,582.66 currently held by General Cigar Corp.

POINT I

CPLR 5226 AUTHORIZES INSTALL-  
MENT PAYMENTS WHICH EXCEED  
THE 10% LIMITATION SET FORTH  
IN CPLR 5231(b).

17. Both plaintiff and defendant agree, as they have in the prior motion which is sub judice, that Rule 69(a) of the Federal Rules of Civil Procedure applies the practice and procedure of New York to supplementary proceedings in aid of this judgment.

18. CPLR 5226 by its terms authorizes a Court to impose reasonable installment payments which may well exceed the limitations set forth in CPLR 5231(b).

19. According to Justice Bertram Harnett,

"It has been said that 'one of [the statute's] prime uses is in that situation. . . . Where it appears that the judgment debtor can afford more than the 10% to which the income execution is limited.' Siegel, 1964 Practice Commentary to CPLR 5226. . . . Such use is wholly discretionary, resting as it does upon equitable factors cited." Yamamoto v. Costello, 73 Misc. 2d 592. (Sup. Ct. Nassau Co. 1973),

there, the court directed installment payments of \$150 per week out of a weekly income of \$260 (approximately 60% of weekly income).

20. Significantly, the execution served by your deponent was not served pursuant to 5231 and therefore should not be modified until there is an affirmative showing and finding that the defendant's asset would not permit defendant sufficient income to meet his reasonable needs.




- 60A

POINT II

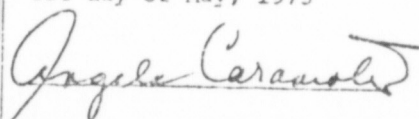
THE MONIES HELD BY GENERAL  
CIGAR CORP., ARE NOT WAGES

21. During the course of defendant's examination he testified that in 1969 he renewed his employment contract with General Cigar which paid him \$70,000 per annum terminable in 1974. The exhibit annexed to the answers to the information subpoena of General Cigar (omitted from Mr. Corwin's exhibits, but annexed hereto as Exhibit F) makes clear that as of June 10, 1971, the defendant resigned from General Cigar and accepted "consulting compensation" at the rate of \$25,000 per annum for services during a maximum of sixty business days per year until he reached the age of 65. Even if he worked the sixty days per year, the General Cigar indebtedness would amount to over \$400.00 per day, but there is no testimony that he has rendered any services to General Cigar since his income was restrained, nor any services this year.

WHEREFORE, your deponent respectfully requests that plaintiff's motion to modify the execution duly served upon General Cigar be denied in all respects and that the cross-motion of plaintiff directing the issuance of an installment payments in the amount of \$5,000 per month, (i.e., of all sums due to defendant from General Cigar and Master Packaging) be granted.

  
VICTOR A. KOVNER

Sworn to before me this  
1st day of May, 1975



ANGELA CARAVITA, Deputy Public  
State of New York, No. 63-10235  
County of New York  
Cert. Exp. March 30, 1977

61A

M. L. ANNIS

## STATEMENT

MAY 30, 1974

CASH IN BANK

\$ 364,000

## ACCOUNTS RECEIVABLE:

Master Packaging, Tampa	\$ 54,000
Brighton Engineering -	
Frankfort, Kentucky	74,000
Florida Downs	10,000
Florida Downs (Stock)	63,000
Miscellaneous	<u>6,000</u>

207,000

REAL ESTATE HOME

250,000

## OWNER ASSETS:

## ART COLLECTION

* Renoir (3)	\$ 120,000
* Toulouse-Lautrec (3)	25,000
* Antiques	118,000
* Furs & Jewelry	103,000
Furnishings (Tampa & NYC)	<u>45,000</u>

411,000

Thoroughbred Horses	\$ 30,000
Florida Downs Stock (Net)	320,000
Master Packaging Equity	<u>600,000</u>

930,000

\$ 2,162,000

OWED TO BANKS

185,000

NET

\$ 977,000

\* Appraised or insured value

Exhibit A

62A

MORTON

STATE  
MAY, 1911

## ASSETS:

#

G.I.E. VARIABLE FUND	512,000
N.Y. STOCK EXCHANGE COMMON	270,000
" " " CONV.	22,000
ACCOUNT REC.	35,000
CASH	18,000

847,000

X ART COLLECTION	327,000
X ANTIQUES	78,000
X FURS & JEWELRY	60,000
WHEATFOD	175,000
X FURNISHINGS	50,000

690,000

## RACING INTERESTS:

X WEST COAST TRAINING CENTER (NET)	55,000
RACING & BREEDING STOCK	42,000
INVESTMENT - FIA. DOWNS	42,000

139,000

1,725,000

\* APPRAISED VALUE





May 1, 1922

## LIABILITIES:

#

OWED TO BANKS, 470,000  
+ GUARANTEE ON  
FED. DEPOS. NOTE 219,000

649,000

ASSETS -  
LIABILITIES -

1,728,000  
470,000  
1,358,000  
219,000

SECURITY GUARANTEE

\$1,139,000

## FINANCIAL STATEMENT

Morton L. Annis, Sr.

March 5, 1971

ASSETS

GCR Common	\$780,000	
Municipal Bonds	585,000	
Deferred Compensation:		
Stock	97,000	
Cash	40,000	
Accts. Rec.	77,000	
Manhattan Ind. Deb.	20,000	
Cash	25,000	
Households:		
N. Y.	25,000	
Tampa	200,000	
Art Collection	300,000	(1)
Antiques	60,000	(1)
Furs & Jewelry	75,000	(1)
Thoroughbreds:		
Racing Stock	20,000	
Breeding Stock	50,000	
	<u>\$2,354,000</u>	

LIABILITIES

Owed Banks	<u>\$ 380,000</u>
	\$1,974,000

(1) Appraised and/or Insurance Value

*See inside  
Corporate Exh 12*

CORRECTIONS TO DEPOSITION OF  
MORTON L. ANNIS TAKEN JANUARY 31, 1975

WEITNAUER TRADING COMPANY vs. MORTON L. ANNIS  
NO. 71 CIV. 782

UNITED STATES DISTRICT COURT FOR  
THE SOUTHERN DISTRICT OF NEW YORK

1. Page 13, lines 12-20 - This portion of the deposition is erroneous. The agreement has been signed and/or accepted by the President of Florida Downs.
2. Page 32, line 7 - This statement "I went to Iowa and it was sold." is an incorrect transcription of the answer. The Deponent has never been to Iowa and cannot at this time recall the precise wording of his response.
3. Page 34, line 4 - This should be corrected to read "same as the others".
4. Page 43, line 12 - This contract is no longer with M. L. Annis, Sr. It has been assigned to Astro Metric.
5. Page 51, line 20 - Should read "... or \$25,000.00 a year until I become 65."
6. Page 67, line 22; Page 70, line 23 - Should read "Emmanuel Tortora".
7. Page 71, line 1 - Should read "... trainer of mine. Martin Krauss, Denise Robinson."
8. Page 81, line 15-16 - Deponent does not remember stating "... and that was the first 'gambit' that she owned."
9. Page 82, line 16 - Should read "certainly, Cassin and <sup>Fellman</sup> ~~Gallman~~".
10. Page 110 - The \$5,000.00 "deposit" to the Annis Foundation was a bookkeeping error. This was a loan from the Deponent's brother, Dr. Annis for \$5,000.00.
11. Page 44 - Line 21 - Should read: "... that to my son based on the \$100,000 I owe him."



MORTON L. ANNIS

*General Cigar Co., Inc.*  
605 THIRD AVENUE, NEW YORK, N. Y. 10016

June 10, 1971

Morton L. Annis, Esq.  
General Cigar Co., Inc.  
605 Third Avenue  
New York, N. Y. 10016

Dear Mr. Annis:

We have given consideration to your expressed wish to be less active in the affairs of the Company and that of its subsidiaries so that you may have more time to devote to other interests as evidenced in part by your resignation as a Director and Officer of General Cigar Co., Inc. and of its subsidiaries and we have discussed with you the desire of the Company, in view of your long and valued service and familiarity with its affairs, to have the continued benefit of your counsel and advice for the period and upon the terms stated below.

1. Termination of Employment Agreement and Rights Thereunder

All your rights, and all obligations to be performed by the Company, under the Employment Agreement dated August 7, 1964 between you and the Company, as amended by the amendments of November 26, 1968 and March 5, 1970, including any and all obligations on the part of the Company for future payments of Basic Salary and Deferred Compensation thereunder, whether accrued prior to or after the date hereof, shall be terminated and you shall have no rights to receive payment of any thereof.

2. Consulting Period

Commencing July 1, 1971 you will be retained by the Company as a Consultant with a compensation at the rate of \$25,000 per annum, payable on the first day of each month, for a term commencing on that date and continuing until the earliest of (i) your 65th birthday, which you represent to be March 24, 1982, (ii) your death prior thereto, or (iii) termination as provided in Section 7.



### 3. Pension Differential

Commencing on the date of your 65th birthday, provided you are then living and if payments under this Agreement have not been terminated prior thereto, and continuing until the date of your death, the Company will pay, or cause to be paid to you, an amount per annum equal to the difference between \$10,000 and the maximum amount which you could receive under the terms of the Employees Retirement Plan, as then amended, of the Company on retirement at age 65.

### 4. Services

During the Consulting period you agree to devote to the business and affairs of the Company, its subsidiaries and affiliated companies, such time and attention as may reasonably be required up to a maximum of 60 business days in any 12-month period commencing July 1, 1971, or any anniversary thereof. Reasonable advance notice requesting services will be given to you and no demands will be made upon you under this Agreement during any four calendar weeks of each year as chosen by you. You shall be reimbursed by the Company for all traveling and incidental expenses incurred by you in connection with the performance of such services. Although a permanent office will not be assigned to you, suitable office space and stenographic and secretarial assistance will be provided for you at such time as you are rendering services hereunder.

### 5. Trade Secrets

During the period in which you are receiving payments under this Agreement and at all times thereafter, you will reasonably preserve and safeguard and, except as may otherwise be permitted by the Company, refrain from publishing, disclosing or disseminating, directly or indirectly, to any present or future, actual or potential, competitor of the Company or any other person or entity any trade secrets, data, formulae, processes, techniques, special equipment, materials or combinations thereof not theretofore known or available to the industry or state of the art or the public generally, in default of which the Company shall be entitled to an injunction, and other equitable relief, and may also, at its election, terminate its payments hereunder.

## 6. Competitive Employment

During the period in which you are receiving payments under this Agreement you will not, without the consent of the Company, which shall not be unreasonably withheld, accept employment or render service to any person, firm or corporation in competition with the Company or any of its present subsidiaries or affiliates, or engage in any business in which the Company or any of its subsidiaries or affiliates is engaged, or enter into, or in any manner take part in, or lend your name, counsel or assistance to, any venture, enterprise, business or endeavor either as a proprietor, principal, investor, partner, director, officer, employee, consultant, advisor, agent, independent contract or in any other capacity whatsoever, for any purpose which would be competitive with any business in which the Company or any of its subsidiaries or affiliates is presently engaged, such business including, without limiting the generality of the foregoing, the growing, sorting, processing, manufacture, advertising, distribution and sale of tobacco, cigars, cigarillos, cigarettes, and any other tobacco products, or products in which tobacco is a constituent element or which are produced or sold in association with tobacco products. Notice in writing of your intention to enter upon or engage in any such activities, specifying such activities in reasonable detail, shall be given to the Company. Failure of the Company to reply thereto within 15 days after the receipt of such notice shall be deemed to be consent thereto by the Company. If the Company gives you notice in writing that it does not consent thereto, you shall refrain from entering into such activities, in default of which the Company shall be entitled to equitable relief in the form of an injunction against any breach of the foregoing covenants or, at its election, may terminate payments hereunder. The foregoing provision shall not prohibit your entering into the business of manufacturing or marketing of clothing or alcoholic products or making investments in any securities listed on the New York or American Stock Exchanges in amounts not exceeding 5% of any single class of such securities outstanding, nor your making investments of any nature in any securities of this Company or in any subsidiary thereof without limitation as to value or amount.

## 7. Termination

(a) The Company, on authorization of its Board of Directors, may terminate its payments under this Agreement at any time for serious cause which shall include, but not be limited to, your willful failure to perform services hereunder or your violations or any of the provisions of this Agreement, including Sections 5 and 6.

(b) If, for any reason, you become incapacitated to perform the consulting services contemplated by this Agreement and if such incapacity shall continue for six months or more, the Board of Directors may terminate the payments of the Company under this Agreement.

8. Notice

Any notices, requests or communications to you will be deemed duly given or sent for the purposes hereof, if sent to you by mail addressed to you at Post Office Box 1531, Tampa, Florida, or such other address you may designate in writing to the Company.

This letter has been executed by the Company pursuant to authority of the Board of Directors and when accepted by you will constitute an Agreement between us and shall be binding upon, and inure to the benefit of, you and your heirs and legal representatives, assigns or creditors, and shall be binding upon and inure to the benefit of, the Company and its successors and assigns, whether by consolidation, merger, sale of assets, or otherwise, and such successors and assigns shall expressly accept and agree to carry out the provisions hereof.

If the foregoing terms and conditions correctly embody your mutual understanding with the Company, kindly endorse your acceptance and agreement therewith in the space below provided, whereupon this shall become a binding Agreement between us.

Very truly yours,

GENERAL CIGAR CO., INC.

By: \_\_\_\_\_  
Edgar M. Cullman, President

Accepted and agreed to  
as of the date first above  
set forth.

\_\_\_\_\_  
Morton L. Annis



71A

OFFICE OF THE SHERIFF  
NEW YORK COUNTY DIVISION  
31 CHAMBERS STREET, NEW YORK, N. Y. 10007  
Telephone: ~~222~~ 374 8202  
JOSEPH P. BRENNAN, Sheriff  
A. JAMES JACOBS, Under Sheriff, In Charge

General Cigar Co. Inc.  
605 3rd Avenue  
New York, N.Y.

Att: H.D. Whitehall

Weitnauer Trading Company Ltd.

Judgment Creditor

vs.

Morton L. Annis

Judgment Debtor

Dear Sir:

An Execution in the above entitled action was served upon you by Deputy Sheriff Dante J. Baietto on February 26, 1975, and you reported that you are indebted to or have in your possession property in which the judgment debtor has an interest in the amount or to the value of \$10,416.56. (recited in letter 3/21/75 from Mudge, Rose, Guthrie & Alexander Esqs.)

Pursuant to law, I hereby demand that you pay over to me as Sheriff of the City of New York all sums due from you to said judgment debtor, and transfer to me said property in which the judgment debtor has an interest, including any property of such nature that has since come into your possession and any debts since coming due.

By promptly complying with this demand, you will not only avoid unnecessary litigation and expense, but will protect yourself against personal liability therefor in legal proceedings instituted pursuant to Sections 5225 and 5227 of the Civil Practice Law and Rules.

Very truly yours,

JOSEPH P. BRENNAN,  
Sheriff

By [Signature]  
Under Sheriff, in Charge  
New York County Division

New York, N.Y. April 1, 1975

REPLY TO DEPUTY  
D. J. BAIETTO

EXHIBIT F

EXHIBIT B



4300  
2543, 1475  
5004

[illegible]

(71) Civ. 782 (RLC)

AFFIDAVIT IN FURTHER  
SUPPORT OF MOTION TO  
MODIFY INCOME EXECU-  
TION AND IN OPPOSITION  
TO CROSS-MOTION TO  
DIRECT INSTALLMENT  
PAYMENTS

MORTON L. ANNIS,

0000 0001 0010 0011 0100 0101 0110 0111 1000 1001 1010 1011 1100 1101 1110 1111 0000 X

LESLIE D. CORWIN, being duly sworn, deposes and says:

2. The sole issue before this Court is the income that the defendant Morton L. Annis receives from General Cigar Corporation pursuant to a consulting agreement dated June 10, 1971. (See Exhibit A to Affidavit of William P.

Laino, dated May 1, 1975, hereinafter "Laino Affidavit".) General Cigar has offices in New York City at 605 Third Avenue. According to paragraph 7 of the Laino Affidavit, General Cigar pays Mr. Annis \$2,083.33 each month for his services.

3. On October 7, 1974, General Cigar was served by plaintiff's attorneys with a Restraining Notice to Judgment Debtor which purported to restrain all of defendant's property. Accordingly, General Cigar began escrowing defendant's semi-monthly payments commencing with the installment due October 15, 1974 (see paragraph 5 of Laino Affidavit).

The total amount of payments due Mr. Annis under his consulting contract which are being held in escrow by General Cigar as of May 1, 1975, is \$14,583.35 (see paragraph 7a of Laino Affidavit).

4. The defendant, Morton L. Annis, Sr., lives in Tampa, Florida, at 108 Martinique Avenue (see page 3 of transcript from examination of Mr. Annis relating to his assets, taken January 31, 1975, in Tampa, Florida, said transcript having been submitted to this Court by Mr. Kovner, trial counsel for plaintiff, on the return date of the motion).

For the past year or so, Mr. Annis has suffered from cancer and has been in and out of hospitals. He has received Cobalt treatments and has incurred large hospital bills. Mr. Annis is semi-retired and the monies he receives from General Cigar are needed so that he can pay his ever increasing medical and hospital bills and to provide for the daily necessities of life for him and his family.

Mr. Annis has never been personally served with a copy of the Restraining Notice to Judgment Debtor (Exhibit B of affidavit of your deponent, dated April 30, 1975), or with a copy of the Income Execution with Notice to Garnishee (Exhibit E of April 30, 1975 affidavit). The monies Mr. Annis receives from General Cigar are paid to him out of a bank in Tampa, Florida.

Furthermore, in an effort to cloud the issues involved herein, plaintiff, by affidavit, by oral argument, and by voluminous exhibits, has made reference to "other income", of Mr. Annis' that Mr. Annis receives in addition to the General Cigar payments. That other income is not germane and should not be before this Court at this time.

5. It is clear, under New York law, that restraining notices are not available against an employer of a judgment debtor even as to 10% of the debtor's earnings before

default by the judgment debtor following his reception of due notice to pay the 10%. Power v. Loonan, 258, NYS 2d 136 (Sup.Ct., Nassau Co. 1965). Accordingly, General Cigar, after having received a Restraining Notice to Judgment Debtor, had no statutory authority to begin escrowing defendant's semi-monthly payments. Mr. Annis never was afforded the opportunity to pay over 10% of his earnings from General Cigar to the plaintiff, and, consequently, Mr. Annis never defaulted. The Court, in Power v. Loonan, supra., in its opinion in which it granted the judgment debtor's motion to vacate a restraining order, stated as follows:

"It would appear that to approve a restraining notice on an employer even as to ten percent of the judgment debtor's earnings would be contrary to the clear intention of the Legislature that an employer should not be bothered with judgments against an employee until the employee had defaulted after due notice to pay the ten percent (CPLR 5231). See the excellent discussion by Professor David D. Siegel in McKinney's Consolidated Laws, Vol. 7B, 1964 Supplement, CPLR 5222 in which he concludes (p.14)

'For the foregoing reasons, a restraining notice should not be available against the garnishee (employer, trustee, etc.) on an income execution even as to only 10% of the judgment debtor's wages (or trust income, etc.). That is so regardless of what might be held with reference to the efficacy of a restraining notice served on the judgment debtor himself.'" (258NYS 2d at 137-138)

6. In a case quite similar to the one at hand, the Supreme Court, Suffolk County, in Brown v. Arabian American



Oil Company, 278 NYS 2d 256 (Sup.Ct., Suffolk Co., 1967), held that a percentage of the monthly earnings of a judgment debtor, who was employed in Saudi Arabia by a New York employer, and who was never personally served with an income execution, could not be reached by a judgment debtor who had served the debtor's New York employer initially. Citing CPLR §5231 and §5226, the Court held that service on an employer failed because there was no preliminary ability to serve the judgment debtor due to the fact that said judgment debtor was not physically present and employed in a county of New York and did not receive money within the state of New York.

7. Plaintiff, by its cross-motion, seeks an installment payment pursuant to CPLR §5226.

From the outset, it should be observed that an installment payment order runs only against the judgment debtor. While a garnishee may be required to pay to the judgment creditor a debt which he, the garnishee, owes the judgment debtor, it is doubtful that such a special proceeding terminates in anything other than a judgment which is not enforceable by contempt. In any event, the CPLR has no provision for an installment payment order which can require a garnishee to withhold more than the usual 10% of the judgment debtor's salary. See, generally, Peterfreund & McLaughlin, New York Practice, second edition, 1968, pages 1246 through 1247.

Consequently, the most that this Court can direct General Cigar to turn over to the Sheriff is 10% of the escrowed amount it is currently holding for Mr. Annis.

8. Finally, in dealing with any installment payment order, it is respectfully submitted that this Court must be bound by the 25% Federal garnishment restriction on disposable earnings imposed under the Consumer Credit Protection Act (15 U.S.C. §1673a).

According to the U. S. District Court in Hodgson v. Cleveland Municipal Court, 326 F.Supp.419 (U.S.District Ct., Northern District of Ohio, 1971):

"Congress expressly provides that State court orders and process issued in violation of garnishment restrictions of section 1673(a) are 'both unauthorized and forbidden.' It is determined and declared that interlocked section 1673(a) and section 1673(c) federally forbid the making, execution, or enforcement of any State court 'order or process' that violates the restrictions on garnishment contained in section 1673(c) or any regulation of the Secretary promulgated as 29 C.F.R. §870.10. Likewise, the effect of any State garnishment law that underlies such offending State court 'order or process' is federally preempted."

WHEREFORE, your deponent respectfully requests that the motion to modify income execution be granted in its entirety; that the cross-motion be denied in all respects; and that this Court issue an order directing

'78A

General Cigar to release to the defendant all sums that  
it is currently holding in escrow for his account.

S/  
\_\_\_\_\_  
LESLIE D. CORWIN

Sworn to before me this

5 day of May, 1975.

S/  
\_\_\_\_\_  
Notary Public

NOTICE  
TO  
RICHARD KENNETH POSES, KATE A. LILLENSTEIN

Attorneys for Plaintiff

33 PARK AVENUE

CORNER OF MANHATTAN NEW YORK, N.Y. 10016

Attorneys for

NOTICE OF SETTLEMENT

Settlement take notice that on order

of which the within is a true copy will be presented  
for settlement to the Hon.

one of the Judges of the within named Court, at

on the day of 19

at

County,

Verdict, etc.

RICH KENNETH POSES, KATE A. LILLENSTEIN

Attorneys for

Attorneys for Defendant

33 PARK AVENUE

CORNER OF MANHATTAN NEW YORK, N.Y. 10016

Attorneys for

Attorneys for Defendant

Defendant.

NOTICE

RICH KENNETH POSES, KATE A. LILLENSTEIN  
Attorneys for Defendant

Office and For Office Address, Telephone

33 PARK AVENUE

CORNER OF MANHATTAN NEW YORK, N.Y. 10016

City, State

To

Attorneys for

Service of a copy of this Verdict

Verdict,

to Verdict submitted.



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----x  
WEITNAUER TRADING COMPANY, LTD.,

Plaintiff-Judgment Creditor,

-against-

MORTON L. ANNIS,

Defendant-Judgment Debtor.  
-----x

REPLY AFFIDAVIT IN SUPPORT  
OF CROSS-MOTION TO DIRECT  
INSTALLMENT PAYMENTS

Docket No. 71 Civ. 782  
(RLC)

STATE OF NEW YORK )  
                              ) SS.:  
COUNTY OF NEW YORK)

VICTOR A. KOVNER, being duly sworn, deposes and says:

1. I am a member of the firm of Lankenau, Kovner & Bickford, trial counsel to Plaintiff-Judgment Creditor ("Plaintiff") and am fully familiar with all the facts and circumstances relating to the pending motions.

2. This affidavit is submitted in reply to the affidavit of Leslie D. Corwin, sworn to May 5, 1975.

A. Defendant has Erroneously Characterized  
the Enforcement Proceedings

3. Defendant's attorneys have mis-characterized the enforcement proceedings that have been invoked pursuant to Article 52 of the CPLR, thus causing some confusion in the

affidavits submitted by defendant. No income execution has been served under CPLR 5231 and thus the discussion of §5231 case law is inapposite.

4. Your deponent has instituted the following four forms of enforcement proceedings in aid of the judgment duly entered on September 19, 1974:

(a) A restraining notice was served upon General Cigar Corp. ("General Cigar") on October 4, 1974, which is the subject of a motion to vacate instituted by defendant on January 8, 1975. The restraining notice has been honored by General Cigar. (Defendant moved to vacate the restraining notice on two grounds (a) that the judgment had not been docketed in a State court and (b) that the restraining notice was served ex parte. As noted in your deponent's affidavit of February 18, 1975, (a) the requirement of docketing applied solely to CPLR 5203 relating to liens on real property and (b) CPLR 5222(a) explicitly authorizes ex parte issuance of a restraining notice by the attorney for the judgment creditor. That motion is sub judice.)

(b) An information subpoena with questions annexed pursuant to CPLR 5224(a)(3) was served January 30, 1975. This subpoena was duly complied with by the service of answers by General Cigar verified February 28, 1975.

(c) An execution under CPLR 5230 (as distinguished from an income execution pursuant to CPLR 5231), dated February 21, 1975, was forwarded to the Office of the Sheriff of New York County and served on General Cigar shortly thereafter, together with a Sheriff's levy dated February 26, 1975. This execution has not been honored by General Cigar, which awaits a judicial determination of the pending motion to modify.

(d) A motion for installment payments pursuant to CPLR 5226 was instituted by your deponent returnable May 7, 1975 before this Court.

5. Mr. Corwin's affidavit of May 5, 1975 also erroneously states that "Mr. Annis has never been personally served with a copy of the restraining notice." In fact, your deponent personally served a copy of the restraining notice upon the defendant at his examination on April 4, 1975, and the record of that examination reflects said service (Exh. 2D, pp. 101-102).

B. The Material Portions of the Moving Affidavit in Support of the Cross-Motion Have Been Conceded.

6. The significance of Mr. Corwin's affidavit lies not simply in its erroneous characterization of the enforcement proceedings, but chiefly in what it tacitly concedes, by its failure to challenge. For instance Mr. Corwin does not deny the series of transactions designed to frustrate the judgment of this Court undertaken by defendant since the institution of this

action, and even after the entry of the original judgment, as described in Paragraphs 10 through 14 of your deponent's affidavit of May 1, 1975.

7. Furthermore, defendant has not denied the documentary evidence of his standard of living as of May 30, 1974, the date he submitted the financial statements to the Tampa banks set forth as Exhibit A to your deponent's prior affidavit. Apparently to contravene these facts, Mr. Corwin has merely asserted, without support, that the defendant has been ill and needs monies for hospital bills. No evidence has been offered of the health insurance benefits he receives from Master Packaging, of which he is Chairman of the Board and a Director.

8. Moreover, Mr. Annis has not denied that his wife, (the sole person who might be a dependent) has substantial assets of her own. Indeed, in his deposition of April 4, 1975, the defendant testified that his wife has personal checking accounts in other banks and travels extensively (Exh. 2D, p. 56). Of the \$364,000 item listed as "cash in bank" on his May 30, 1974 financial statement, the defendant said that he could not determine what portion of that was his wife's, whom he described as "a very secretive woman about her position . . . she is an independent woman" (Exh. 2D, pp. 57-58). In addition, he testified



that the \$145,000 of paintings and \$118,000 of antiques and most of the \$103,000 of furs and jewelry were owned by his wife. No denial of the considerable wealth of his wife has been even suggested by defendant .

9. Most significant, however, is defendant's failure to deny that he actually rendered no services to General Cigar within the past year (as asserted in my affidavit of May 1) and, certainly, no evidence has been offered that any services were rendered to General Cigar within 60 days of any of the payments accrued by General Cigar.

10. Furthermore, the defendant has not denied that he has been entitled to receive an additional \$35,000 per annum from Master Packaging, which has been withheld by Master Packaging pursuant to defendant's voluntary request.

11. Therefore, in this record there is no evidence that the monies held by General Cigar are "earnings of the judgment debtor for his personal services rendered within 60 days before" within the meaning of CPLR 5205(e)(2). Indeed, there is no evidence that they are earnings for any personal services rendered as opposed to a pay-out of his 1969 \$70,000 per annum contract, designed to "spread" income for tax reasons, as asserted in my prior affidavit. Furthermore, in this record there is no evidence that defendant is living in any way different than

as described in the \$2,000,000 net worth financial statement delivered to the Tampa banks as of May 30, 1974 and, certainly, no evidence of any need by defendant nor by any "dependent", if indeed he has any dependents.

12. Lastly, on this record the fact of the fraudulent transfers has in effect been conceded by defendant's failure to offer evidence in refutation.

C. The Amounts Due From General Cigar Are Not For Personal Services.

13. Further evidence that the sums due defendant from General Cigar are not for personal services and are not wages or earnings within the meaning of CPLR 5231 or 5205(e) is provided by the fact that "General Cigar makes no deductions from this (gross) amount for taxes, social security or other purposes" (§7b of Laino affidavit). Under §3402 of the Internal Revenue Code a requirement is imposed that sums be withheld for income taxes from the amounts paid by an employer as wages. Wages is defined as meaning "all remuneration (other than fees paid to a public official) for services performed by an employee for his employer." §4301, Title 26.

14. As the regulations under §3401 make clear, the "name by which remuneration for services is designated is immaterial. Thus, salaries, fees, bonuses, commissions on sales or on insurance premiums, pensions and retired pay are wages

within the meaning of the statute if paid as compensation for services performed by the employee for his employer". Regulations §31.3401(a)-2.

15. There can be no question that an employer-employee relationship must not exist at least in the view of General Cigar, since otherwise such amounts would be subject to withholding. Accordingly, it is clear that the amounts being paid are not for personal services nor are the amounts being paid by an "employer" but are, indeed, monies being disbursed in discharge of defendant's property rights under the 1969 contract.

WHEREFORE, for the foregoing reasons, and in accordance with the applicable law set forth in the accompanying memorandum of law, your deponent respectfully requests that the motion to modify the execution served upon General Cigar be denied and the cross-motion for an order directing installment payments of \$5,000 per month (i.e., all monies due from General Cigar and Master Packaging) be granted.

---

VICTOR A. KOVNER

Sworn to before me this  
7th day of May, 1975

---

NOTARY (CAPTIONED) 17  
Notary Public for the State of New York  
My Commission Expires 12/31/75

Deposition of Morton L. Annis dated January 31, 1975.

IN THE UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

-----X	
WEITNAUER TRADING COMPANY, LTD.,	:
	:
Plaintiff,	:
	:
VS.	:
	:
MORTON L. ANNIS,	:
	:
Defendant.	:
	:
-----X	

NUMBER:

71 CIV. 732

DEPOSITION OF:

MORTON L. ANNIS

TAKEN:

Pursuant to Notice by Counsel  
for the Plaintiff

DATE:

January 31, 1975

TIME:

12:55 p.m.

PLACE:

Suite 203, 403 Morgan Street  
Tampa, Florida

BEFORE:

Phyllis Baugh  
Certified Shorthand Reporter  
Notary Public

COPY

Pages 1 - 117

INDEPENDENT REPORTING SERVICE

CERTIFIED SHORTHAND REPORTERS

SUITE 203, 403 MORGAN STREET

TAMPA, FLORIDA 33602

(813) 228-7112



APPEARANCES:

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VICTOR A. KOVNER, ESQUIRE  
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New York, New York 10020  
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Co-Counsel for Plaintiff;

TED R. MANRY, III, ESQUIRE  
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Tampa, Florida  
Attorneys for Defendant.

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E X H I B I T S

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Plaintiff's Exhibit Three	Page 29
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1 The deposition of MORTON L. ANNIS, taken pursuant  
2 to Notice by Counsel for the Plaintiff, on the 31st  
3 day of January, 1975, beginning at 12:55 p.m., at  
4 Suite 203, 403 Morgan Street, Tampa, Hillsborough  
5 County, Florida, for the purpose of discovery, for use  
6 as evidence at the trial of this cause, or both, before  
7 Phyllis Baugh, C.S.R., Notary Public.

8 -----  
9 THEREUPON,

10 MORTON L. ANNIS,  
11 the deponent herein, being first duly sworn on oath,  
12 was examined and deposed as follows:

13 MR. REGIER: Mr. Annis, would you state your  
14 name for the record again and --

15 THE DEPONENT: Morton L. Annis, Sr.

16 MR. REGIER: And your address, sir?

17 THE DEPONENT: 108 Martinique Avenue.

18 MR. REGIER: I noticed from the service of  
19 the papers that you were served at a different  
20 address than 108 Martinique. The address that  
21 was shown here was 1805 North Westshore Boulevard,  
22 Suite 120. What is that?

23 THE DEPONENT: Well, that's an answering  
24 service and office service. And this chap was  
25 looking for me and I thought it would be the

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1           easiest thing, since no one was home, that I  
2           should meet him somewhere.

3           MR. MANRY: We make no assertions about  
4           service, so if that's what you're worried about --

5           MR. REGIER: Okay. I'd like to start, then,  
6           with the documents that we asked you to bring  
7           with you. It's my understanding that you are  
8           here under a subpoena duces tecum which directed  
9           you to bring certain financial papers with you.  
10          Did you bring those with you?

11          THE DEPONENT: I did.

12          MR. MANRY: There you go, gentlemen.

13          MR. KOVNER: Can we identify these for the  
14          record perhaps in groups? I don't want you to  
15          identify each document.

16          MR. MANRY: Gentlemen, I have not been  
17          through them other than casually. How we can  
18          identify them -- you've got checks, check stubs,  
19          copies of notes, bills, you name it they're in  
20          there. And I think that perhaps -- off the  
21          record.

22          (Discussion off the record.)

23          MR. KOVNER: Why don't we put this, first,  
24          on the record. Shall we mark these?

25          MR. REGIER: I think so.

1 MR. KOVNER: Okay. Plaintiffs Exhibit One is  
2 an annual report for the Gardenia Company and for --

3 MR. MANRY: That's probably --

4 MR. KOVNER: It's to be filed in 1974 --  
5 Astro-Metric --

6 MR. MANRY: A-s-t-r-o - M-e-t-r-i-c.

7 MR. KOVNER: That would be One and Two.

8 (Plaintiff's Exhibits One and Two were  
9 marked for Identification.)

10 MR. MANRY: I don't want to mislead you, but  
11 there is a second page. This basically has  
12 nothing to do with this form, so I don't want to  
13 mislead you.

14 MR. KOVNER: The same company?

15 MR. MANRY: It relates to the same company.

16 MR. KOVNER: Well, why don't we just say that  
17 Exhibit One has two pages and Exhibit Two has one?

18 (To Deponent) Why don't you just describe,  
19 if you would, briefly, Mr. Annis, the Gardenia  
20 Company and Astro-Metric?

21 THE DEPONENT: Astro-Metric, which is a  
22 corporation which I sold recently, was a loss  
23 corporation, showed no profit, and had a net value  
24 of \$500, according to the tax report -- that was  
25 the accountant's report -- that was the equity



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1 involved. A loss corporation. We sold that for  
2 \$500.

3 The Gardenia Corporation is a debt  
4 corporation, of which I am part owner, which had  
5 a horse training center which is in the process  
6 of being sold and rented out. And it has a  
7 substantial debt due both to taxes and on equity  
8 payments.

9 MR. REGIER: This was Gardenia Company?

10 THE DEPONENT: Yeah.

11 MR. REGIER: How many horses were involved  
12 with that?

13 THE DEPONENT: There was no horses with  
14 Gardenia Company, it was a training center.

15 MR. REGIER: So the horses were brought  
16 there to be trained? The company owned no horses?

17 THE DEPONENT: No, really not to be trained  
18 so much as to be stabled.

19 MR. REGIER: How many horses were stabled  
20 there?

21 THE DEPONENT: Up to a hundred and twenty;  
22 from ten to a hundred and twenty depending on the  
23 time of year.

24 MR. REGIER: How much board were you getting  
25 per horse?

1 THE DEPONENT: Varied with the number of  
2 horses and with the length of -- duration of  
3 stable usage.

4 MR. REGIER: For example, if you had -- if  
5 somebody brought in ten horses to board there --

6 THE DEPONENT: Well, I didn't run it so I  
7 can't give you complete figures. It was run by  
8 Mr. Zambito who was half owner of this. And  
9 tax returns have been filed. And I would say  
10 that if a horse went in there in November he  
11 would stay -- November, December, January,  
12 February, March, April -- around six months.  
13 And the charge would be probably less than \$200  
14 for the six months. Sounds like very little, huh?

15 MR. REGIER: Yes, it does.

16 THE DEPONENT: Well, you've never been in  
17 the racetrack business, that's why. Most  
18 trainers are dead broke and they have to have a  
19 place to keep their horses, and that's it.

20 MR. REGIER: You said this Gardenia Company  
21 is a "dead" company now?

22 THE DEPONENT: Debt.

23 MR. REGIER: Oh, debt. /

24 MR. KOVNER: What do you mean by a debt  
25 company?

1 THE DEPONENT: We had to take a mortgage on  
2 the property which -- and we are presumably going  
3 to sell the company. The taxes that are due  
4 and the equity payments to Mr. Zambito for the  
5 sale far exceeds the cash value of the corporation.

6 MR. KOVNER: Do you recall what your  
7 investment was in that company?

8 THE DEPONENT: Hmm, gosh, Mr. Kovner, that  
9 was a long time ago. A basic investment?

10 MR. KOVNER: Roughly.

11 THE DEPONENT: Let's see, this is '75. I  
12 think it was -- I wouldn't want to be held to it --  
13 I think -- (To Mr. Manry) Can I make a --

14 MR. MANRY: You can make an estimate as long  
15 as it's understood that that is exactly what he is  
16 doing.

17 MR. KOVNER: Fine.

18 THE DEPONENT: I would estimate it was a  
19 term payment for around \$50,000.

20 MR. REGIER: The property that was owned by  
21 the company, how many acres were involved?

22 THE DEPONENT: Nine.

23 MR. REFIER: And where are they located?

24 THE DEPONENT: Nine acres adjacent to Florida  
25 Downs Racetrack.



1 MR. MANRY: Which is basically Oldsmar, just  
2 right outside of Tampa here.

3 MR. REGIER: Do you have an estimate of the  
4 value of that land?

5 THE DEPONENT: No.

6 MR. REGIER: You said that the land and the  
7 buildings thereon are mortgaged at this time?

8 THE DEPONENT: Yes, that's correct.

9 MR. REGIER: And did you say that the  
10 mortgage was in excess of your estimated value of  
11 the property?

12 THE DEPONENT: No, I didn't say that. The  
13 mortgage is -- I think it's right here (Looking  
14 at Exhibits One and Two) \$70,000 -- excuse me,  
15 \$130,000 amount of mortgage, paying off a \$67,000  
16 mortgage. This was a renegotiation of a mortgage.  
17 I guess that's the best way to put it.

18 MR. KOVNER: What percentage of the company  
19 do you own?

20 THE DEPONENT: Half.

21 MR. KOVNER: And who owns the other half?

22 THE DEPONENT: Nelson Zambito.

23 MR. REGIER: You said that this investment  
24 that you made was quite sometime ago. How long  
25 have you had this interest in this company?



1 THE DEPONENT: Oh, I'd say -- I don't really  
2 recall -- I would say it is not a recent  
3 investment, we've had it for --

4 MR. REGIER: More than five years?

5 THE DEPONENT: Let's see, that would be --  
6 that would be '69. I think we have had it for  
7 more than that. I'd have to -- I never thought  
8 about when we bought it. Let me see -- I don't  
9 recall. I'm sure it's more than five years.

10 MR. MANRY: If you don't know, don't guess.

11 THE DEPONENT: I can't guess, I don't know.  
12 I tell you, frankly, I never ran this thing. It  
13 was run by Mr. Zambito.

14 MR. MANRY: Off the record.

15 (Discussion off the record.)

16 MR. MANRY: Back on the record. Mr. Annis,  
17 do you know how -- and you may not know -- from  
18 a legal standpoint whether you and Mr. Zambito  
19 owned this Gardenia Corporation jointly or  
20 separately?

21 THE DEPONENT: I don't know that.

22 MR. MANRY: You don't know that at this  
23 point?

24 THE DEPONENT: No.

25 MR. MANRY: Okay, just something that occurs

1 to me.

2 THE DEPONENT: I did not run this operation.

3 MR. MANRY: Okay.

4 MR. KOVNER: What would you value your  
5 interest in it?

6 THE DEPONENT: Today?

7 MR. KOVNER: Today.

8 THE DEPONENT: Zero.

9 MR. REGIER: Have you ever received any  
10 dividends or salaries from the company?

11 THE DEPONENT: The company paid no salaries,  
12 no dividends. It just got along, hopefully paid  
13 the mortgage money and sometimes it had to be done  
14 by individual contributions.

15 MR. REGIER: So at this time you regard your  
16 -- do you regard your investment as gone?

17 THE DEPONENT: (Nodded affirmatively.) I  
18 say it's a debt company. It owes taxes, it owes  
19 equity to Mr. Zambito. And that's it.

20 MR. KOVNER: When you say it owes equity, it  
21 also owes equity to you, doesn't it?

22 THE DEPONENT: No, to Zambito.

23 MR. KOVNER: But don't you each have fifty  
24 percent interest in it?

25 THE DEPONENT: Yes. Well, we have -- well,

1       yes. I guess you could say what you said is  
2       correct. There is an equity payment for both  
3       of us.

4               MR. KOVNER: Does he have priority to you?

5               THE DEPONENT: Well, I don't really have  
6       an equity payment for the basis that this is  
7       such a complicated God-damned -- excuse me --  
8       complicated thing to try to explain. But let me  
9       sum it up and say it this way: I'm owed no money.  
10      I owe the taxes -- on the sale of the property  
11      fifty percent of the money after the taxes is  
12      due Zambito. I have no income or equity in it.

13              MR. KOVNER: Well, what is your fifty  
14      percent interest in it?

15              THE DEPONENT: My fifty percent interest was  
16      secured when I took the second mortgage out.

17              MR. KOVNER: But if the second mortgage is  
18      paid, you'd still have, then, a fifty percent  
19      interest? You haven't assigned it to anybody  
20      else except as security for the second mortgage,  
21      right?

22              THE DEPONENT: No, it has been assigned.

23              MR. KOVNER: To whom?

24              THE DEPONENT: It has been assigned, not  
25      legally, but it has not -- it has been assigned



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1 by an agreement with another corporation.

2 MR. KOVNER: Which is --

3 THE DEPONENT: Which is the racetrack.

4 MR. KOVNER: What is the name of that  
5 corporation?

6 THE DEPONENT: Florida Downs.

7 MR. KOVNER: What are the terms of that  
8 agreement, roughly?

9 THE DEPONENT: I couldn't tell you.

10 MR. REGIER: Is there a copy of that  
11 agreement in these records somewhere?

12 THE DEPONENT: No, the agreement's never been  
13 fulfilled.

14 MR. KOVNER: When was it made?

15 THE DEPONENT: It's still an open matter.  
16 Certain -- it has never come to fulfillment.  
17 This particular transfer has not come to  
18 fulfillment as yet.

19 MR. KOVNER: You mean it hasn't been signed?

20 THE DEPONENT: That's correct.

21 MR. KOVNER: But it's been negotiated?

22 THE DEPONENT: Quasi-negotiated. And I'm in  
23 a position where I happen to be also a stockholder  
24 in racetracks.

25 MR. KOVNER: Oh, in Florida Downs?



1 THE DEPONENT: Yes. A subordinate stock-  
2 holder.

3 MR. REGIER: What is your -- what's the  
4 extent of your interest in Florida Downs, then?

5 THE DEPONENT: I own certain common stock  
6 subject to liens.

7 MR. REGIER: How much common stock do you  
8 own in Florida Downs?

9 THE DEPONENT: I own 248,000 shares subject  
10 to loans amounting to very substantial amounts of  
11 money.

12 MR. KOVNER: Roughly, and to whom?

13 THE DEPONENT: Well, \$135,000 to one party.

14 MR. KOVNER: Who is that party?

15 THE DEPONENT: My brother.

16 MR. KOVNER: Whose name is --

17 THE DEPONENT: Leonard Annis. Plus the  
18 market value of 3,000 shares of General Cigar  
19 Company stock, some \$45,000.

20 MR. KOVNER: I'm sorry, I just want to  
21 clarify that. Are you saying that that 3,000  
22 shares of General Cigar also secures that loan?

23 THE DEPONENT: No, no, I'm saying that stock  
24 is subject to payment of those particular debts  
25 if sold. There is no market of the stock, it's

1 not a traded commodity.

2 MR. REGIER: Your stock. Now, when you say  
3 the stock, is that Florida Downs' stock?

4 THE DEPONENT: That's right.

5 MR. REGIER: There's no market on the Florida  
6 Downs' stock?

7 THE DEPONENT: There's no market, no value,  
8 no trading.

9 MR. REGIER: Is it a closely-held company?

10 THE DEPONENT: I don't know what a closely-  
11 held company is.

12 MR. REGIER: Do more than, say, twenty people  
13 own shares in it?

14 THE DEPONENT: I don't know, I don't know the  
15 extent of the stockholders.

16 MR. REGIER: Do you know what percentage, or  
17 approximately what percentage of your 243,000  
18 shares is of the total stock issued in that  
19 company? \*

20 THE DEPONENT: Oh, it is minute. I would say  
21 it's certainly --

22 MR. MANRY: If you know, say. Don't guess.

23 THE DEPONENT: Very minute.

24 MR. KOVNER: Less than ten percent?

25 THE DEPONENT: Oh, sure.

1 MR. KOVNER: Less than five percent?

2 THE DEPONENT: Let's see -- well, less than  
3 ten percent. I don't know the exact number of  
4 shares that are issued. However, I would make  
5 mention of the fact -- though I shouldn't  
6 volunteer information -- that there are certain  
7 debts against the stock.

8 MR. KOVNER: That's exactly my next question.  
9 You said subject to certain debts. One of these  
10 is the \$135,000 loan to your brother?

11 THE DEPONENT: That's correct, plus the  
12 3,000 shares of General Cigar Company stock.

13 MR. KOVNER: I don't understand. What do  
14 you mean plus the 3,000 shares?

15 THE DEPONENT: That's the collateral  
16 requirement.

17 MR. KOVNER: So that the Florida Downs'  
18 shares are further collateralized than the  
19 \$135,000 loan?

20 THE DEPONENT: \$135,000 plus 3,000 shares of  
21 General Cigar Company stock that was put up by  
22 my brother to make this transaction which was  
23 owed to him if this stock is sold.

24 MR. KOVNER: What other loans?

25 THE DEPONENT: Plus a commitment made by me



1 for money owed my daughter, which would  
2 approximate a value of certainly between \$50,000  
3 and \$60,000.

4 MR. KOVNER: Your daughter's name is --

5 THE DEPONENT: Susan Ehrans.

6 MR. KOVNER: E-h-r-a-n-s?

7 THE DEPONENT: That's correct.

8 MR. KOVNER: Is this a written obligation,  
9 this commitment to the daughter?

10 THE DEPONENT: Yes.

11 MR. KOVNER: Are there any other loans to  
12 which this -- which are liens on this 248,000  
13 shares?

14 THE DEPONENT: Minor gifts made of stock  
15 over the years.

16 MR. KOVNER: I see. Some of the 248  
17 has been given to people?

18 THE DEPONENT: That's correct.

19 MR. KOVNER: To whom?

20 THE DEPONENT: Family.

21 MR. KOVNER: Roughly how many shares, do  
22 you know?

23 THE DEPONENT: I would say three years --  
24 twelve -- about 70 odd thousand dollars, using  
25 the \$6,000 figure of a husband and wife gift.



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1 MR. KOVNER: You say \$70,000's worth of  
2 this stock?

3 THE DEPONENT: That's correct.

4 MR. KOVNER: What value per share, or --

5 THE DEPONENT: No value per share was ever  
6 put on it.

7 MR. KOVNER: How many shares were given?

8 THE DEPONENT: No, it was a monetary figure  
9 given.

10 MR. REGIER: How do you determine, then?  
11 You say you gave \$70,000's worth of stock to  
12 certain family members and then you don't know  
13 how many shares that will amount to?

14 THE DEPONENT: I have no idea what the value  
15 of the shares are. There's never been any  
16 trading on it.

17 MR. REGIER: How do you give the dollars  
18 without giving the shares?

19 THE DEPONENT: That number of shares of  
20 stock which would equal \$6,000, which my wife  
21 and I did give tax free every year.

22 MR. MANRY: How do you -- are you just  
23 mak'ng an estimate of what you think that the --

24 THE DEPONENT: Yes. \$6,000.

25 MR. MANRY: It's not a market, it's --

1 THE DEPONENT: There is no market.

2 MR. KOVNER: So you have given X amount of  
3 shares equal to \$70,000 to family members?

4 THE DEPONENT: Which is within the \$6,000  
5 limitation.

6 MR. REGIER: How many shares did that  
7 amount to?

8 MR. KOVNER: He didn't know.

9 MR. MANRY: Didn't remember how many shares.  
10 He's just estimating it over the period of years  
11 where he did this.

12 MR. REGIER: Were the shares that made up  
13 the \$70,000's gifts over and above the 248,000  
14 shares that you now own?

15 THE DEPONENT: They were part and parcel of  
16 that.

17 MR. KOVNER: Were actual stock certificates  
18 issued to these family members?

19 THE DEPONENT: No. Stock certificates were  
20 not issued because of the overall liens.

21 MR. KOVNER: What form did the gifts take?

22 THE DEPONENT: Letters.

23 MR. KOVNER: Are there any other loans upon  
24 these 248,000 shares of stock besides the ones  
25 that you have enumerated?

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1 THE DEPONENT: Yes, there is a loan of  
2 80,000 -- \$83,000 to the -- on the bank which  
3 secures some of this obligation.

4 MR. KOVNER: Which bank?

5 THE DEPONENT: Exchange National Bank.

6 MR. KOVNER: Is that here in Tampa?

7 THE DEPONENT: Yes.

8 MR. KOVNER: Anything else?

9 THE DEPONENT: Nothing to my knowledge.

10 MR. KOVNER: Now, when was the loan with  
11 your brother made?

12 THE DEPONENT: '73.

13 MR. KOVNER: Are there agreements in writing?

14 THE DEPONENT: Yes.

15 MR. KOVNER: Do we have copies in here?

16 (Indicating documents)

17 THE DEPONENT: No.

18 MR. KOVNER: When was the commitment made to  
19 your daughter of 50-to \$60,000?

20 THE DEPONENT: Hmm --

21 MR. MANRY: Don't guess if you don't know.

22 THE DEPONENT: I can't remember.

23 MR. KOVNER: Was it within the last two years,  
24 or what?

25 THE DEPONENT: I think it was before that.



1 MR. KOVNER: Was it more than five years ago?

2 THE DEPONENT: Well, if we may go off the  
3 record for a moment --

4 (Discussion off the record.)

5 MR. KOVNER: Back on the record. Who  
6 handled these transactions for you?

7 MR. MANRY: Well, let's make the -- we were  
8 off the record and we were talking about trans-  
9 actions, we were talking about racetrack  
10 transactions. Go ahead.

11 MR. KOVNER: Who handled the transactions  
12 with your family members for you?

13 THE DEPONENT: Well, my -- the transaction?

14 MR. KOVNER: I mean who wrote up whatever  
15 documents were necessary.

16 THE DEPONENT: One of the members of his  
17 law firm. (Indicating Mr. Manry)

18 MR. KOVNER: I see. Is there a writing  
19 reflecting this obligation?

20 THE DEPONENT: Yes.

21 MR. KOVNER: Do you know when that writing  
22 was dated?

23 THE DEPONENT: I assume this obligation was  
24 dated at the time of the issuance of the last  
25 stock in '73.



1 MR. KOVNER: The gifts to your family, were  
2 they at the rate of 6,000 per year?

3 THE DEPONENT: Yes.

4 MR. KOVNER: And the last year in which you  
5 made such a gift was --

6 THE DEPONENT: This year.

7 MR. KOVNER: This year 1974 or '75?

8 THE DEPONENT: '75. First of every year I  
9 make the gifts.

10 MR. KOVNER: I see. So that's been going on  
11 for ten or eleven years?

12 THE DEPONENT: No, no, only going on for  
13 three years.

14 MR. KOVNER: Is that \$6,000 from you and  
15 \$6,000 from your wife?

16 THE DEPONENT: No, no, husband and wife  
17 can jointly give \$6,000 after exemptions. And  
18 both of my children are married so they get  
19 \$12,000.

20 MR. KOVNER: Over three years that would  
21 equal \$36,000. And you estimated that the gifts  
22 were about \$70,000?

23 THE DEPONENT: Perhaps you misunderstood me.  
24 12 -- there are two couples, all right? Correct?

25 MR. KOVNER: Uh-hum.

1 THE DEPONENT: 6 times 4 is 24, right? 24  
2 times 3 is 72 you can give to a husband and wife.

3 MR. KOVNER: I understand. When was the  
4 loan with the -- made from the Exchange National  
5 Bank?

6 THE DEPONENT: A long time ago I don't  
7 know.

8 MR. KOVNER: Over five years?

9 THE DEPONENT: Oh, yes, many years ago.

10 MR. KOVNER: When did you first acquire an  
11 interest in Florida Downs Corp.?

12 THE DEPONENT: Ten years ago.

13 MR. KOVNER: At that time did you acquire  
14 the full 248,000 shares?

15 THE DEPONENT: No.

16 MR. KOVNER: You had been acquiring more  
17 as time went on?

18 THE DEPONENT: This thing has been  
19 reorganized and reorganized more times than I  
20 can tell you.

21 MR. KOVNER: Have you, since your initial  
22 interest, have you purchased additional securities  
23 in Florida Downs Corp. as opposed to acquiring  
24 different shares in a recapitalization or split,  
25 or the like?

1 THE DEPONENT: Different types of securities?  
2 No.

3 MR. KOVNER: Have you been purchasing  
4 additional interest in the company since your  
5 initial acquisition of it?

6 THE DEPONENT: Well, this loan to my brother  
7 took care of the collateral to make the additional  
8 purchase.

9 MR. KOVNER: From whom did you purchase those  
10 securities?

11 THE DEPONENT: From the racetrack.

12 MR. KOVNER: Directly from the company?

13 THE DEPONENT: I believe so, yes.

14 MR. REGIER: Is the full name of that  
15 company Florida Downs, Incorporated, or --

16 THE DEPONENT: Well, you'll have to find out.  
17 There's Florida Downs and Florida Downs and Turf  
18 Club, and I'm not sure which is which.

19 MR. REGIER: You're not sure which you own  
20 interest in?

21 THE DEPONENT: Well, it is the same thing.  
22 But, as I say, it has been reorganized so many  
23 times --

24 MR. MANRY: Don't go saying it's the same  
25 thing because we don't know that.

1 THE DEPONENT: It's not the same thing. It  
2 is a very complicated financial -- unsuccessful  
3 financial maneuver, shall we say, over ten years.  
4 It has never made a dime and it has been reorganized  
5 time and again and more monies put in. And I  
6 would say that there was no value to these stock  
7 today.

8 MR. REGIER: Have you received dividends or  
9 salaries from --

10 THE DEPONENT: Well, that's one question  
11 there's no problem answering. No, nobody has.  
12 In fact, we're lucky if we get a free parking  
13 permit.

14 MR. KOVNER: This corporation does operate  
15 an operating racetrack known as Florida Downs?

16 THE DEPONENT: It operates a very fine,  
17 believe it or not, beautiful racetrack in Oldsmar,  
18 Florida, called Florida Downs which is running  
19 right now. In fact, if I wasn't here today I'd  
20 be out there.

21 MR. MANRY: Unfortunately -- off the record.

22 (Discussion off the record.)

23 MR. REGIER: Back on the record. Then, what  
24 is the relationship between Florida Downs and  
25 Gardenia Company?



1 THE DEPONENT: Florida Downs is negotiating  
2 to buy the property of Gardenia Company and has  
3 negotiated it but not in written form.

4 MR. REGIER: What terms have been agreed to  
5 for that purchase?

6 THE DEPONENT: Taking over of the mortgage  
7 obligations.

8 MR. REGIER: Entirely?

9 THE DEPONENT: Yes.

10 MR. REGIER: There will be no additional  
11 compensation or consideration given?

12 THE DEPONENT: It does not look that way at  
13 this moment.

14 MR. KOVNER: What are the mortgage obligations?

15 THE DEPONENT: The mortgage obligations are  
16 60,000 or -- well, it's right here (Referring to  
17 Exhibit One.)

18 MR. MANRY: We previously said 135,000.

19 MR. KOVNER: I missed that, I'm sorry. I  
20 see it here in my notes.

21 THE DEPONENT: That's right, 135, that's it.

22 MR. REGIER: Off the record.

23 (Discussion off the record.)

24 MR. KOVNER: The 248,000 shares is in  
25 Florida Downs Corporation as opposed to the Turf

1 Club? Or you're not sure which?

2 THE DEPONENT: Well, Florida Downs and Turf  
3 Club and Florida Downs Corporation, I think, are  
4 evidently two separate -- that is to say they  
5 operate as a racetrack --

6 MR. MANRY: There are two separate  
7 corporations operating and -- this is my  
8 understanding -- operating different facets of  
9 the racetrack. Just like you might contract out  
10 your concession or your clubhouse, or something,  
11 they, I think, probably operate different phases  
12 of that.

13 THE DEPONENT: I think that's what it is.  
14 It's a very legal thing that we don't know  
15 anything about.

16 MR. KOVNER: Is your interest in both  
17 corporations?

18 THE DEPONENT: I have interest in only one.

19 MR. KOVNER: Which is --

20 THE DEPONENT: I believe it's Florida Downs  
21 and Turf Club.

22 MR. MANRY: Florida Downs and Turf Club,  
23 you're not sure which at this point.

24 THE DEPONENT: No, I'm not sure. The legal  
25 manipulations of this thing, the reorganization,

1 I was lost five years ago in this thing. All I  
2 know is a racetrack in operation.

3 MR. KOVNER: Let's have a word on  
4 Astro-Metrics.

5 THE DEPONENT: Okay.

6 MR. KOVNER: You say you have recently sold  
7 your interest in Astro-Metrics for \$500?

8 THE DEPONENT: Yes, \$500, which was the  
9 stockholder's equity, or some such designation on  
10 the income tax report, which was included therein.

11 MR. REGIER: To whom did you sell that  
12 interest?

13 THE DEPONENT: Mrs. Riffe, R-i-f-f-e.

14 MR. REGIER: What relationship does she  
15 have to you, if any? Long-standing acquaintance  
16 or relative?

17 THE DEPONENT: Worked for me.

18 MR. REGIER: In what capacity?

19 THE DEPONENT: Secretary.

20 MR. REGIER: For how many years?

21 THE DEPONENT: Couple.

22 MR. REGIER: And she has no other relation-  
23 ship to you?

24 THE DEPONENT: (Nodded negatively.)

25 MR. KOVNER: Let's mark this Exhibit Three ,

1 which appears to be a letter from you to your  
2 daughter, Susan, dated July 1, 1970, with a note  
3 attached.

4 (Plaintiff's Exhibit Number Three was  
5 marked for Identification.)

6 MR. MANRY: It might be a good idea to obtain  
7 a staple gun and staple that now so it will not  
8 get separated.

9 (Interruption in proceedings.)

10 MR. MANRY: What's the date on that letter?

11 MR. REGIER: July 1, 1970. It looks like  
12 it's been changed from 1972. The note is dated  
13 for July 1, 1970.

14 MR. KOVNER: Will you look at this, Mr.  
15 Annis, and tell me if you recall that transaction?

16 THE DEPONENT: Yes, I certainly recall --  
17 the transaction of the money?

18 MR. KOVNER: Yeah, or what were the  
19 circumstances around it?

20 THE DEPONENT: I'd be delighted to tell you.  
21 In that year --

22 MR. MANRY: Just tell them what the  
23 transaction was.

24 THE DEPONENT: -- Inter-Continental Wine  
25 and Spirits required additional money to pay the



1           detties. I borrowed that money from my children  
2           and upon -- gave them notes for same and interest  
3           to cover the notes. The firm went into bankruptcy.

4           MR. KOVNER: What stocks did you withdraw  
5           from her account?

6           THE DEPONENT: General Cigar and IBM.

7           MR. KOVNER: Do you recall how she became  
8           the owner of those securities?

9           THE DEPONENT: Requests from her grandfather  
10          and grandmother.

11          MR. KOVNER: Has there been any payment on  
12          this loan?

13          THE DEPONENT: No.

14          MR. KOVNER: Any interest?

15          THE DEPONENT: Small amounts.

16          MR. KOVNER: During what periods?

17          THE DEPONENT: During the period of that  
18          time until now.

19          MR. KOVNER: What's your best recollection  
20          of what interest you paid on this note?

21          THE DEPONENT: Hmm, I would have no  
22          recollection.

23          MR. KOVNER: Did you pay it once or twice a  
24          year, or more?

25          THE DEPONENT: Possibly, yes, something like

1 that.

2 MR. KOVNER: Where does your daughter reside?

3 THE DEPONENT: Well, that's a very good  
4 question. At the present moment at Aspen,  
5 Colorado.

6 MR. REGIER: The letter refers to insurance  
7 policies. Did you take out insurance policies on  
8 your life payable to her?

9 THE DEPONENT: No, I don't think that's it.

10 MR. REGIER: What insurance are you referring  
11 to?

12 THE DEPONENT: That's furniture, casualty  
13 insurance. I would pay the insurance and store  
14 the items and provide her with valuation, no  
15 life insurance.

16 MR. MANRY: Collateral insurance.

17 THE DEPONENT: Collateral insurance.

18 MR. KOVNER: Did you ever obtain such  
19 insurance?

20 THE DEPONENT: Yes.

21 MR. KOVNER: Do you recall in what amount?

22 THE DEPONENT: The amount of the property?

23 MR. KOVNER: No, the amount for which you  
24 were insured to cover the --

25 MR. MANRY: Face value of the policy.

1 THE DEPONENT: I would say probably \$25,000.

2 MR. KOVNER: That covered the antiques, art  
3 and furniture?

4 THE DEPONENT: Antiques and furniture.

5 MR. KOVNER: At your home and the office?

6 THE DEPONENT: Yes. The art has since been  
7 sold. I went to Iowa and it was sold. You'll  
8 see it in the tax reports. Present value is what  
9 I'm talking about. Art has been sold over the  
10 years.

11 MR. KOVNER: I'll come to that in just a  
12 minute. But you refer to your office here. Where  
13 was your office?

14 THE DEPONENT: At -- on Howard Avenue and --  
15 Gradiatz Annis, G-r-a-d-i-a-z, on Howard Avenue  
16 and the expressway, right before the expressway.  
17 Howard Avenue and -- what is that? Cypress. It's  
18 before Cypress.

19 MR. REGIER: Is your office still located  
20 there?

21 THE DEPONENT: No.

22 MR. REGIER: What art was sold and for what  
23 amounts?

24 THE DEPONENT: It's all listed in the --

25 MR. REGIER: All right, we'll come to it

1 later.

2 THE DEPONENT: -- tax returns.

3 MR. KOVNER: Let's have this letter from  
4 Mr. Annis, Sr. to Morty -- presumably Morty Annis  
5 Jr. --

6 THE DEPONENT: Correct.

7 MR. KOVNER: -- dated July 5, 1974, with  
8 two notes --

9 THE DEPONENT: That must be a mistake.

10 MR. KOVNER: -- attached.

11 THE DEPONENT: May I see that? That must  
12 have been a mistake.

13 MR. MANRY: No, it's not a note.

14 MR. KOVNER: Excuse me. I'm sorry, did I  
15 mischaracterize it? Oh, it's a note and stock  
16 transfer certificate attached.

17 (Plaintiff's Exhibit Four A, B and C were  
18 marked for Identification.)

19 MR. KOVNER: Mr. Annis, could you describe  
20 the transactions referred to in this document,  
21 referring to Number Four?

22 THE DEPONENT: Yes. This is a transfer of  
23 securities at their cost value from me and  
24 Master Packaging to my son as part payment of  
25 the note and additional transfer of another



1 obligation of the company to him covering my note.

2 MR. KOVNER: What were the circumstances of  
3 the note dated July 1, 1970?

4 THE DEPONENT: Same as Darcus.

5 MR. KOVNER: Did you also take out General  
6 Cigar and IBM from his account?

7 THE DEPONENT: Correct.

8 MR. REGIER: Let me make sure I understand  
9 the transactions. You were borrowing money. You  
10 were taking stock from trust accounts --

11 THE DEPONENT: I was the trustee.

12 MR. REGIER: You were the trustee?

13 THE DEPONENT: One of them.

14 MR. REGIER: One of the trustees of the  
15 trusts that were established by your parents --

16 THE DEPONENT: No, I wouldn't -- I don't  
17 know who established the trusts, no.

18 MR. REGIER: -- for your children?

19 THE DEPONENT: The trusts established for  
20 my children.

21 MR. REGIER: Do you know who established the  
22 trusts for your children?

23 THE DEPONENT: I guess probably I did. I  
24 don't know, it may have been -- I don't recall.

25 MR. MANRY: You don't know what particular

1 trusts it was?

2 THE DEPONENT: No, I don't recall.

3 MR. REGIER: And you were taking stocks  
4 from these trusts and giving the beneficiaries,  
5 your son and daughter, notes --

6 THE DEPONENT: Correct.

7 MR. REGIER: -- for the stocks. Then did  
8 you sell the stocks or use them as security for --

9 THE DEPONENT: They were --

10 MR. REGIER: -- loans?

11 THE DEPONENT: -- they were taken over by --  
12 because of the defaulting of Mr. Cazin \* former  
13 president of Inter-Continental Wine and Spirits --  
14 they were taken over by the bank as part of the  
15 assets of the corporation, which they were not,  
16 but they were still taken over by the bank.

17 MR. REGIER: Had you pledged those stocks  
18 to the bank for loans made to the company?

19 THE DEPONENT: It was a specific transaction  
20 covering payment of import duties, putting money  
21 aside for that. But it was so construed that in  
22 the embezzlement by Mr. Cazin that this money,  
23 which was at the Banker's Trust, that separate  
24 fund was considered part and parcel of the entire

25 \* Phonetic Spelling

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1 obligations of the corporation.

2 MR. REGIER: Off the record, please.

3 (Discussion off the record.)

4 MR. REGIER: Back on the record now. Did  
5 you say -- and I think you said -- that you did  
6 not know who had set up the trusts, who the set  
7 lawyer of the trust was?

8 THE DEPONENT: I'm not quite sure I know  
9 what you mean by that.

10 MR. REGIER: Who created the trusts for  
11 your daughter and your son?

12 THE DEPONENT: One individual?

13 MR. REGIER: Yes. Somebody had to take  
14 stocks and put them in the trust and say, "I  
15 give these to my daughter," or, "To Susan and  
16 Morty in trust for their benefit." Someone had  
17 to say that, someone had to put those stocks in  
18 there. Who did that?

19 THE DEPONENT: Well, some of it was at the  
20 request of my parents and some were gifts from  
21 me. I don't know who made the trust up.

22 MR. MANRY: No, what they want to know is  
23 not who drew the trust instrument, so to speak,  
24 but did you set these requests aside yourself  
25 with some of your money to create the trust or

1 was this part of a trust created in your parent's  
2 will?

3 THE DEPONENT: Oh, I see what you mean.

4 MR. MANRY: Yeah.

5 THE DEPONENT: Well, I made some  
6 contributions towards the trusts. But whether it  
7 was created in my parent's will -- both my mother  
8 and father made separate requests. I just can't  
9 answer that question. Honestly, I don't know.

10 MR. REGIER: At what time did you make  
11 contributions to these trusts?

12 THE DEPONENT: Many years ago.

13 MR. REGIER: More than five?

14 THE DEPONENT: Oh, gosh, many years ago.

15 MR. REGIER: And you have made no contributions  
16 to these trusts within the last five years?

17 THE DEPONENT: No.

18 MR. MANRY: I would hazard a guess -- this  
19 is off the record --

20 (Discussion off the record.)

21 MR. REGIER: Back on the record.

22 THE DEPONENT: I think you're right, because  
23 your associate drew up -- because my mother passed  
24 away in '62 and dad died in '64. And -- that's  
25 when they died. And I think it was set up as a



1 request. I believe so, but I can't be sure.  
2 That's a legality that I never inquired as to.

3 MR. REGIER: Are these trusts still in  
4 existence?

5 THE DEPONENT: Yes.

6 MR. REGIER: And there are other assets?

7 THE DEPONENT: Yes.

8 MR. REGIER: Substantial assets in the trusts?

9 THE DEPONENT: No, not substantial.

10 MR. REGIER: More than \$100,000 in the trusts?

11 THE DEPONENT: No.

12 MR. REGIER: You're still one of the trustees  
13 of the trusts?

14 THE DEPONENT: No longer.

15 MR. REGIER: Who is the trustee now, or who  
16 are the trustees?

17 THE DEPONENT: My wife and the bank, Marine  
18 Bank.

19 MR. REGIER: At what time did you resign as  
20 trustee?

21 THE DEPONENT: The last few days.

22 MR. REGIER: Are these trusts revocable?

23 THE DEPONENT: I don't know.

24 MR. REGIER: In order for funds to be  
25 distributed from the trust does it require the

1 approval of both the bank and the individual  
2 trustee, at this time being your wife, or --

3 THE DEPONENT: I can't answer that question,  
4 I don't know.

5 MR. REGIER: (To Mr. Kovner) Do you think  
6 I'm pursuing a --

7 MR. MANRY: Off the record, I'll volunteer  
8 that you probably are in this particular situation.

9 MR. KOVNER: Let's pass on. Off the record.

10 (Discussion off the record.)

11 MR. KOVNER: I did want to ask, in connection  
12 with Exhibit Four -- you gave 100,000 shares of  
13 Master Packaging Company Preferred --

14 THE DEPONENT: Correct.

15 MR. KOVNER: Which you valued at a cost of  
16 \$50,000?

17 THE DEPONENT: Correct.

18 MR. KOVNER: And the remaining 48 was to be  
19 paid upon receipt of the \$50,000 due to Master  
20 Packaging?

21 THE DEPONENT: Due to me.

22 MR. KOVNER: Due to you.

23 THE DEPONENT: After bank obligations are  
24 fulfilled by Master Packaging.

25 MR. KOVNER: Has that 48 been paid to your

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1 son?

2 THE DEPONENT: No, sir.

3 MR. KOVNER: When was Master Packaging formed?

4 THE DEPONENT: Master Packaging was purchased  
5 -- Master Packaging was purchased in --

6 MR. MANRY: He asked when it was formed.

7 THE DEPONENT: Oh, when it was formed? I  
8 don't know when it was formed.

9 MR. KOVNER: When did you acquire an interest  
10 in it?

11 THE DEPONENT: We acquired an interest in it  
12 -- it has now been a year and six months.

13 MR. KOVNER: What interest did you acquire?

14 THE DEPONENT: Twenty-one percent.

15 MR. KOVNER: How many shares was that?

16 THE DEPONENT: No shares, just preferred  
17 stock.

18 MR. KOVNER: How many shares of preferred  
19 stock?

20 THE DEPONENT: That amount there. (Indicating)

21 MR. KOVNER: The 100,000 shares was your sole  
22 interest in Master Packaging?

23 THE DEPONENT: Correct.

24 MR. KOVNER: And you paid 50,000 for it?

25 THE DEPONENT: Correct.

1 MR. KOVNER: To whom did you pay it?

2 THE DEPONENT: National Service Industries.

3 MR. KOVNER: Is that a public company?

4 THE DEPONENT: Yes.

5 MR. KOVNER: Is Master Packaging a public  
6 company?

7 THE DEPONENT: No.

8 MR. KOVNER: Who are the other owners or  
9 who has interest in Master Packaging?

10 THE DEPONENT: Richard Turkel, T-u-r-k-e-l,  
11 president.

12 MR. KOVNER: How much does he own?

13 THE DEPONENT: Sixty odd percent. Sixty,  
14 probably sixty-five percent. And a few minor  
15 employees are stockholders. No more than three.

16 MR. KOVNER: Do you have any financial  
17 information on Master Packaging here?

18 THE DEPONENT: No.

19 MR. KOVNER: What are its obligations in  
20 banks?

21 THE DEPONENT: It has a loan through the  
22 First National Bank payable in ten years.

23 MR. KOVNER: First National Bank?

24 THE DEPONENT: Of Tampa, Florida, of  
25 \$150,000 -- 1,000,500, excuse me, due and payable



1 in equal installments in ten years from the date  
2 of the acquisition of the company.

3 MR. KOVNER: Are they in default on that loan?

4 THE DEPONENT: No.

5 MR. KOVNER: Were you ever an officer,  
6 employee, of Master Packaging?

7 THE DEPONENT: Chairman of the Board.

8 MR. KOVNER: Are you today?

9 THE DEPONENT: Yes.

10 MR. KOVNER: What has been your compensation  
11 as Chairman?

12 THE DEPONENT: I have not been compensated as  
13 Chairman.

14 MR. KOVNER: Have you received any  
15 compensation from Master Packaging?

16 THE DEPONENT: There has been compensation.  
17 At one time there was compensation to me as a  
18 marketing counsel.

19 MR. KOVNER: What was that?

20 THE DEPONENT: \$35,000 a year.

21 MR. KOVNER: From what period was that paid?

22 THE DEPONENT: From the first and -- from  
23 the start of the business until probably four or  
24 five months ago.

25 MR. KOVNER: What circumstances surrounds

1 determination of that compensation?

2 THE DEPONENT: New negotiations now in  
3 process.

4 MR. KOVNER: Do you have an employment  
5 contract with them?

6 THE DEPONENT: Yes, I have a contract, yes.

7 MR. KOVNER: Is this 35,000 per year part  
8 of that contract?

9 THE DEPONENT: Yes.

10 MR. KOVNER: Is that contract still in  
11 effect?

12 THE DEPONENT: Yes.

13 MR. KOVNER: Are there any other benefits?

14 THE DEPONENT: None.

15 MR. KOVNER: Outside of the salary?

16 THE DEPONENT: None.

17 MR. REGIER: Have you received dividends?

18 THE DEPONENT: No.

19 MR. KOVNER: Where does your son reside?

20 THE DEPONENT: New York City.

21 MR. REGIER: What is his age?

22 THE DEPONENT: Thirty-one.

23 MR. REGIER: What is your daughter's age?

24 THE DEPONENT: Twenty-seven.

25 MR. KOVNER: At the time you purchased the

1 twenty-one percent interest in Master Packaging --

2 THE DEPONENT: By the way, excuse me, I  
3 would like to correct that. It was twenty-five  
4 percent which since was decreased by a few  
5 percentage points based upon the sale to these  
6 minor employees. I should have corrected that.

7 MR. KOVNER: Did you enter into any borrowings  
8 to finance your purchase of it?

9 THE DEPONENT: Yes.

10 MR. KOVNER: From whom did you borrow funds?

11 THE DEPONENT: Oh, you mean -- no. To get,  
12 you mean, the 100,000?

13 MR. KOVNER: The 50.

14 THE DEPONENT: No.

15 MR. KOVNER: Well, you said it was 50,000.

16 THE DEPONENT: If you read the letter,  
17 there's another 50,000 that was due the company  
18 that is due and payable.

19 MR. REGIER: The company owed you \$50,000?

20 THE DEPONENT: Well -- but I have assigned  
21 that to my son based on the 90,000 I owe him.  
22 However, I would say that there are certain  
23 obligations of the corporation that I have signed  
24 -- to Master Packaging that I am a signer of.

25 MR. REGIER: Could you describe those?

1 THE DEPONENT: Yes. The Citizens and  
2 Southern Bank of Atlanta, Georgia, for what was  
3 150,000; and to National Service Industries for  
4 deferred payments of \$350,000.

5 MR. KOVNER: Are either of those obligations  
6 in default?

7 THE DEPONENT: No.

8 MR. KOVNER: And you are the guarantor of  
9 those in total?

THE DEPONENT: I don't know what you mean  
I'm the guarantor.

MR. KOVNER: I mean are you individually  
responsible for the full amounts?

THE DEPONENT: Yes.

MR. KOVNER: Is anybody else individually  
responsible?

THE DEPONENT: No.

MR. KOVNER: So you are the sole guarantor?

THE DEPONENT: I don't know whether Mr.  
Turkel is or not. I don't know whether he is or  
not, he may be a joint but I would sort of doubt  
it. I don't know.

(The above proceedings recessed at 1:55  
and resumed at 2:03 p.m.)



1 MR. KOVNER: Where is the office of Master  
2 Packaging?

3 THE DEPONENT: Tampa, Florida.

4 MR. KOVNER: Do you have the address?

5 THE DEPONENT: Manhattan Avenue.

6 MR. KOVNER: When did you first acquire an  
7 interest in General Cigar, and what interest did  
8 you acquire?

9 THE DEPONENT: Merged Gradiatz Annis with  
10 General Cigar Company in 1964.

11 MR. KOVNER: What shares of General Cigar  
12 did you acquire at that time?

13 THE DEPONENT: Total quantity? Personally?

14 MR. KOVNER: Personally and family members.

15 THE DEPONENT: I don't recall.

16 MR. KOVNER: Do you recall personally?

17 THE DEPONENT: No. A relatively small  
18 amount.

19 MR. KOVNER: When you say a relatively small  
20 amount, would it have been under \$100,000's worth?

21 THE DEPONENT: My transaction was -- well,  
22 excuse me --

23 MR. KOVNER: Perhaps it would be easier if  
24 I asked you to explain the essential terms of  
25 the merger.

1 THE DEPONENT: The majority of the stock was  
2 held by my family, father and brother. I had a  
3 relatively small amount of stock on the transfer,  
4 on the merger, rather. The value I do not recall.

5 MR. KOVNER: Was it an exchange of stock  
6 tax free?

7 THE DEPONENT: Tax free exchange of stock.

8 MR. KOVNER: Were there other owners of  
9 Gradiatz Annis other than yourself?

10 THE DEPONENT: Yes, it was a corporation.

11 MR. KOVNER: So that all owners received an  
12 exchange of stock?

13 THE DEPONENT: Correct.

14 MR. KOVNER: Do you remember the number of  
15 shares per shareholder?

16 THE DEPONENT: I don't.

17 MR. KOVNER: After your father passed away  
18 did you acquire a larger amount of shares?

19 THE DEPONENT: Not at all.

20 MR. KOVNER: Do you own shares of General  
21 Cigar today?

22 THE DEPONENT: No.

23 MR. KOVNER: After you initially acquired  
24 shares in the merger did you thereafter acquire  
25 additional shares?

1 THE DEPONENT: No.

2 MR. KOVNER: When did you dispose of your  
3 shares that you did acquire?

4 THE DEPONENT: As per my tax reports.  
5 (Indicating)

6 MR. KOVNER: Could you tell me roughly when  
7 that was?

8 THE DEPONENT: No, I can't.

9 MR. KOVNER: Couldn't give me the year, or  
10 within two years?

11 THE DEPONENT: (Nodded negatively.)

12 MR. KOVNER: Did you dispose of it within  
13 the past three years?

14 THE DEPONENT: I don't recall.

15 MR. KOVNER: Did you dispose of it last year?

16 THE DEPONENT: Oh, no, not last year.

17 MR. KOVNER: The year before?

18 THE DEPONENT: I don't recall.

19 MR. KOVNER: Can't recall? To whom did you  
20 sell those shares or give them?

21 THE DEPONENT: Public sale.

22 MR. KOVNER: Public sale?

23 THE DEPONENT: (Nodded affirmatively.)

24 MR. KOVNER: Do you know what you received?

25 THE DEPONENT: Dollars and cents?

1 MR. KOVNER: Proceeds.

2 THE DEPONENT: No, I don't.

3 MR. KOVNER: Approximately?

4 THE DEPONENT: No, I don't.

5 MR. KOVNER: You don't? Do you recall the  
6 selling price of the shares at the time?

7 THE DEPONENT: I can't recall.

8 MR. KOVNER: Do you have any other -- from  
9 1964 to the present do you have any other interests  
10 in General Cigar other than the shares you  
11 obtained in the merger?

12 THE DEPONENT: No.

13 MR. KOVNER: Did you enter into an  
14 employment contract at any time with General  
15 Cigar?

16 THE DEPONENT: Yes.

17 MR. KOVNER: When was that and what were  
18 its terms, essentially?

19 THE DEPONENT: The first employment contract  
20 was for five years, from 1964 to 1969. The  
21 contract was renewed.

22 MR. KOVNER: What was the compensation?

23 THE DEPONENT: \$70,000 a year.

24 MR. KOVNER: Did you have an office?

25 THE DEPONENT: Did I have an office?



1 MR. KOVNER: Did you hold an office in the  
2 company?

3 THE DEPONENT: Yes, senior vice-president.

4 MR. KOVNER: Were there any fringe benefits?

5 THE DEPONENT: What do you mean by fringe  
6 benefits?

7 MR. KOVNER: Did you have any life insurance,  
8 other insurances, and/or retirement income?

9 THE DEPONENT: Just the normal corporate  
10 provisions.

11 MR. KOVNER: Do you recall them?

12 THE DEPONENT: No.

13 MR. KOVNER: You say it was renewed in 1969?

14 THE DEPONENT: I believe that was the date.

15 MR. KOVNER: For a further five years'  
16 period?

17 THE DEPONENT: No.

18 MR. KOVNER: For how long?

19 THE DEPONENT: It was renewed for five then  
20 it was canceled in, I believe, '72.

21 MR. KOVNER: What were the circumstances  
22 surrounding its cancellation?

23 THE DEPONENT: I don't think I can answer  
24 that question because it's too involved.

25 MR. KOVNER: Did you resign?

1 THE DEPONENT: Yes.

2 MR. KOVNER: Were you asked to resign?

3 THE DEPONENT: I can't go into the details  
4 of that. (To Mr. Manry) I don't see, Counsel,  
5 that it's pertinent at all.

6 MR. MANRY: I think it's irrelevant.

7 THE DEPONENT: First of all it's very  
8 involved, it would take hours and hours.

9 MR. KOVNER: Off the record.

10 (Discussion off the record.)

11 MR. KOVNER: What was the new negotiation  
12 that was carried on at the time of your resignation  
13 of General Cigar? What new understanding was  
14 reached?

15 MR. MANRY: Did you subsequently enter into  
16 a new contract with General Cigar?

17 THE DEPONENT: Yes.

18 MR. KOVNER: What were the terms of that?

19 THE DEPONENT: Payment of a consultant fee  
20 of \$20,000 a year until I become sixty-five.

21 Then I believe a normal pension.

22 MR. KOVNER: How old are you now?

23 THE DEPONENT: Fifty-seven.

24 MR. KOVNER: Outside of this consultant fee  
25 are you entitled to any retirement benefits of any

1 kind?

2 THE DEPONENT: What I said, the pension  
3 benefits at the age of sixty-five.

4 MR. KOVNER: What are those benefits?

5 THE DEPONENT: I have no idea.

6 MR. KOVNER: Do you know whether they have  
7 cash value?

8 THE DEPONENT: No cash value.

9 MR. MANRY: You mean present cash value?

10 THE DEPONENT: Pardon?

11 MR. MANRY: He means present cash value.

12 THE DEPONENT: No.

13 MR. KOVNER: They have no --

14 THE DEPONENT: There's no cash value present.  
15 There's no value to the contract upon my death.

16 MR. KOVNER: Were you a director from 1964  
17 to 1972?

18 THE DEPONENT: Yes.

19 MR. KOVNER: Did you receive compensation  
20 as director?

21 THE DEPONENT: No.

22 MR. KOVNER: From your tax return it appears  
23 that you sold your 6,000 shares of General Cigar  
24 for something over \$122,000.

25 THE DEPONENT: Really?

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1 MR. KOVNER: Is that --

2 THE DEPONENT: What date is that?

3 MR. KOVNER: Am I reading it correctly?

4 MR. REGIER: That's what I saw.

5 MR. MANRY: Identify it for the record,  
6 please.

7 MR. KOVNER: Yes. It's in the 1972 return.  
8 It's on the Schedule D, Capital Gains and Losses,  
9 where it says that your cost was \$5,900 and your  
10 sale price was \$122,000 for a capital gain of  
11 \$116,000.

12 THE DEPONENT: 122,000 shares?

13 MR. KOVNER: 6,000.

14 THE DEPONENT: 6,000? Wait a minute, 6,000  
15 shares, 122 --

16 MR. MANRY: Take a look at that. (Indicating  
17 document.)

18 THE DEPONENT: Well, the accountant's  
19 usually right. So that would be 6,000, 100 --  
20 let's see, that's \$30 --

21 MR. KOVNER: 20 -- no, no, it would be 30  
22 something a share.

23 THE DEPONENT: Gees, that seems like an  
24 awful lot. But if he says it -- what year is that?

25 MR. KOVNER: '72.



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1 THE DEPONENT: If he says it was it -- I  
2 don't recall anything.

3 MR. MANRY: You don't prepare your own tax  
4 returns, do you?

5 THE DEPONENT: No. 6 times 20 is 120 odd  
6 dollars, correct? 20 odd dollars, something like  
7 that. Yeah. Uh-huh.

8 MR. KOVNER: Yeah.

9 THE DEPONENT: Possibly.

10 MR. KOVNER: Was that your sole interest in  
11 General Cigar, about 6,000 shares?

12 THE DEPONENT: I don't recall, I don't  
13 remember.

14 MR. REGIER: When you made that sale was  
15 that the -- did you sell all of your shares that  
16 you had at that time?

17 THE DEPONENT: I can't -- I don't know. You'd  
18 have to examine my tax returns.

19 MR. REGIER: Do you have any shares remaining?

20 THE DEPONENT: None.

21 MR. REGIER: Have you sold any since the  
22 1972 sale?

23 THE DEPONENT: Unless it's in my tax return  
24 I don't believe I have. I don't recall those  
25 items that I reported in my tax return.

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1 MR. REGIER: The \$122,000 that you received  
2 for those shares, do you recall what investment  
3 you made with that money?

4 THE DEPONENT: What year is that, '72?

5 MR. REGIER: 1972.

6 THE DEPONENT: No.

7 MR. REGIER: That's a substantial cash  
8 inflow, I would think that you might remember.

9 THE DEPONENT: Off the record. My dear  
10 young friend, may I say this to you? I have no  
11 recollection of what I did with the money. If  
12 you'll examine my tax returns you will see that  
13 I -- you will understand why I have no  
14 recollection.

15 1972 -- I have no recollection.

16 MR. MANRY: If you don't have a recollection,  
17 you don't have a recollection.

18 MR. KOVNER: The same page indicates that  
19 you sold six oil paintings by Renoir --

20 THE DEPONENT: Correct.

21 MR. KOVNER: -- for \$160,000.

22 THE DEPONENT: If it says it, I did it.

23 MR. KOVNER: To whom did you sell them?

24 THE DEPONENT: Six oil paintings? Six?

25 MR. KOVNER: (Nodded affirmatively.)

1 THE DEPONENT: I think they were sold to two  
2 parties. I think two different people bought  
3 them as agents. I don't know who got them  
4 eventually, it was sold through agents.

5 MR. KOVNER: Do you know who the agents were?

6 THE DEPONENT: Six, you say?

7 MR. KOVNER: (Nodded affirmatively.)

8 THE DEPONENT: What is the amount of money?

9 MR. KOVNER: \$160,000.

10 THE DEPONENT: Six. Well, the paintings --  
11 I have used two dealers, two agents; one Robert  
12 Zessman, who is out of business now. What year  
13 is that, '72?

14 MR. KOVNER: '72.

15 THE DEPONENT: There were many negotiations  
16 on those paintings. I'd have to find out who  
17 sold them. I don't recall. Zessman, I believe,  
18 sold some of them.

19 MR. KOVNER: Do you know what you did with  
20 the \$160,000 from the sale of art?

21 THE DEPONENT: (Nodded negatively.) Used it  
22 to live, I assume.

23 MR. KOVNER: Did your wife ever own shares  
24 of General Cigar?

25 THE DEPONENT: I don't believe so. I don't

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1 know, I don't think so.

2 MR. KOVNER: Does she own them now?

3 THE DEPONENT: No.

4 MR. KOVNER: You mentioned earlier that at  
5 different points your son and daughter had shares  
6 of General Cigar.

7 THE DEPONENT: Correct.

8 MR. KOVNER: Did they receive those shares  
9 from your father's will?

10 THE DEPONENT: I believe so.

11 MR. KOVNER: Do you know whether they still  
12 own shares of General Cigar?

13 THE DEPONENT: They do not.

14 MR. KOVNER: They do not?

15 THE DEPONENT: (Nodded negatively.)

16 MR. KOVNER: Do you know whether or not your  
17 brother still owns shares of General Cigar?

18 THE DEPONENT: I'm not aware of my brother's  
19 holdings.

20 MR. KOVNER: Do you have an interest in a  
21 company called Morton Annis Enterprises?

22 THE DEPONENT: I never heard of such a thing.

23 MR. KOVNER: Or any similar name?

24 THE DEPONENT: Morton Annis Enterprises?

25 MR. KOVNER: Or a name similar to that,



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1 Morton Annis Company?

2 THE DEPONENT: Well, there was once a Morton  
3 Annis Associates, but that's gone by the boards.

4 MR. KOVNER: When was that?

5 THE DEPONENT: I don't know. It was just a  
6 -- it was a consulting capacity for an insurance  
7 company.

8 MR. KOVNER: When did it cease to operate?

9 THE DEPONENT: Oh, I don't know the exact  
10 date. A few years ago.

11 MR. KOVNER: Has it been dissolved?

12 THE DEPONENT: I don't know.

13 MR. MANRY: Do you know whether it was a  
14 corporation or not?

15 THE DEPONENT: No, it wasn't.

16 MR. REGIER: Do you own stocks in any other  
17 companies other than general stocks and bonds  
18 that are in publicly held corporations?

19 THE DEPONENT: No.

20 MR. REGIER: You have no interest in any  
21 other closely-held companies?

22 THE DEPONENT: I have no interest in any  
23 closely-held company except what I have specified.

24 MR. REGIER: And what you have specified is  
25 the Florida Downs --

give Counsel in writing certain other documents in writing which I myself --

MR. MANRY: Don't, he'll ask for what he wants.

DEPONENT: Okay. Well, then, you find out from him what you want and I'll do the best I can to comply.

Q (By Mr. Kovner) I want to know if there is an assignment of the note you had?

A Yes.

MR. KOVNER: We don't have that yet.

MR. MANRY: There's no assignment of the note. You never assigned that note, Morton.

DEPONENT: Yes, I did.

MR. MANRY: To whom?

DEPONENT: To Morty.

MR. MANRY: You didn't assign the note to Morty, you gave him a note.

DEPONENT: Oh, I beg your pardon. I gave him -- the note is his. I'm getting involved in legal gobbledygook. The money is his. Now, whether it's --

MR. MANRY: You gave him a note for the loan and that's it.

DEPONENT: I've got -- I'll have to review

1 is your home on?

2 THE DEPONENT: Hmm, I guess it's 125 by 75.  
3 100 --

4 MR. MANRY: Normal residence.

5 THE DEPONENT: It's a normal residence.

6 MR. MANRY: Within the exclusion under the  
7 Florida Constitution, if that's what you want to  
8 know.

9 MR. REGIER: That's it.

10 MR. MANRY: It's a residence and it's  
11 completely covered by the exemption under his  
12 homestead.

13 MR. REGIER: And you own no other real  
14 estate other than that home? And the home that  
15 you're referring to is the one at 108 Martinique?

16 THE DEPONENT: Correct.

17 MR. REGIER: You own no real estate in any  
18 other states?

19 THE DEPONENT: No.

20 MR. REGIER: No vacation home?

21 THE DEPONENT: Oh, God, no.

22 MR. REGIER: Condominium?

23 THE DEPONENT: God, no.

24 MR. REGIER: What automobiles do you own?

25 THE DEPONENT: None. I rent a car.

1 MR. REGIER: You own no cars?

2 THE DEPONENT: No. My wife has a car that  
3 she owns. And I rent cars, I don't own cars.

4 MR. REGIER: Are you and your wife still  
5 married?

6 THE DEPONENT: As of nine o'clock this  
7 morning we were. I don't know what it will be  
8 when I get home but I assume --

9 MR. REGIER: Living together?

10 THE DEPONENT: Yes, we are living together  
11 legally.

12 MR. REGIER: The furnishings in your home,  
13 how many rooms -- well, first of all how many  
14 rooms do you have in your house?

15 THE DEPONENT: Rooms?

16 MR. REGIER: Uh-huh. Is it a three bedroom  
17 house or four bedroom?

18 THE DEPONENT: Three bedrooms.

19 MR. REGIER: And a den?

20 THE DEPONENT: Yeah, usual Florida home.

21 MR. REGIER: Okay. What value do you put on  
22 the furnishings in the home?

23 THE DEPONENT: Very little.

24 MR. REGIER: Well, judging from your previous  
25 comment about, "My dear young friend, the \$122,000



1 not being a substantial cash inflow," what does a  
2 little --

3 THE DEPONENT: That did not go into house  
4 furnishings.

5 MR. MARRY: He asked you to estimate the  
6 value of your furnishings in your house. Have  
7 you ever had them evaluated? Would you put an  
8 estimate of value on them?

9 THE DEPONENT: Very little. Most of it is  
10 furniture that's been there for many many years.  
11 I would say that the depreciated value of  
12 furniture is very very little.

13 MR. REGIER: Less than \$10,000?

14 THE DEPONENT: Oh, certainly, way less than  
15 that.

16 MR. REGIER: What art objects do you now own?

17 THE DEPONENT: I own no art objects at the  
18 moment. At the moment I, myself, own no art  
19 objects.

20 MR. REGIER: Does your wife own art objects?

21 THE DEPONENT: Yes, she does, a few.

22 MR. REGIER: Were these art objects purchased  
23 with her money, of personal sources, or jointly?

24 THE DEPONENT: Jointly.

25 MR. REGIER: Joint sources?

1 THE DEPONENT: Jointly.

2 MR. REGIER: What value would you place on  
3 these objects?

4 THE DEPONENT: Of hers?

5 MR. REGIER: Yes.

6 THE DEPONENT: I would have to get an  
7 appraisal.

8 MR. REGIER: Are they in the form of  
9 paintings?

10 THE DEPONENT: Uh-hum.

11 MR. REGIER: Are they originals?

12 THE DEPONENT: There's a question as to the  
13 authenticity of the paintings.

14 MR. KOVNER: To whom have the paintings been  
15 attributed?

16 THE DEPONENT: Renoir.

17 MR. KOVNER: How many are there?

18 THE DEPONENT: There are two.

19 MR. KOVNER: When were they acquired?

20 THE DEPONENT: Oh, early '60's.

21 MR. REGIER: Does your wife own stock in any  
22 closely-held company?

23 THE DEPONENT: No.

24 MR. REGIER: Does she have a portfolio of  
25 publicly-held stocks?

1 THE DEPONENT: Not to my knowledge.

2 MR. REGIER: Is she currently employed by  
3 any company?

4 THE DEPONENT: No.

5 MR. REGIER: Does she hold office in any  
6 companies?

7 THE DEPONENT: No.

8 MR. REGIER: Does she have retirement income  
9 from any companies?

10 THE DEPONENT: No.

11 MR. REGIER: Do you have any other retirement  
12 benefits from any other companies other than the  
13 ones you've already named?

14 THE DEPONENT: No.

15 MR. REGIER: As I understand it, from what  
16 we've talked about so far, you have an income of  
17 \$35,000 a year on a salary -- on a contract with  
18 Master Packaging.

19 THE DEPONENT: Not at the moment.

20 MR. REGIER: That contract is still in effect,  
21 is that correct?

22 MR. MANRY: If you can -- that contemplates  
23 a legal question as to the effect and enforce-  
24 ability of the contract. If you can answer it,  
25 answer it; if you cannot answer or if you have to

1 take a guess at the legalities, don't answer it.

2 THE DEPONENT: I can't answer as to the  
3 legal --

4 MR. REGIER: I think you answered this once  
5 before, but would you say it again for me? When  
6 was the last time that you drew a salary from  
7 Master Packaging?

8 THE DEPONENT: I didn't say that before.  
9 Last year sometime.

10 MR. REGIER: Towards the end of '74?

11 THE DEPONENT: Possibly the fall. I don't  
12 recall exact dates.

13 MR. REGIER: Are you still receiving the  
14 \$25,000 a year from General Cigar?

15 THE DEPONENT: No.

16 MR. REGIER: What became of that arrangement?

17 THE DEPONENT: (Indicating Mr. Kovner)

18 MR. KOVNER: Were you receiving it until a  
19 restraining notice was served in connection with  
20 this case?

21 THE DEPONENT: Correct.

22 MR. KOVNER: All right.

23 MR. MANRY: Which I believe is the subject  
24 of a --

25 MR. KOVNER: Subject of a pending motion.



1 MR. MANRY: -- pending litigation.

2 MR. REGIER: Are you receiving compensation  
3 from any company at the present time?

4 THE DEPONENT: No.

5 MR. REGIER: You're not receiving compensation  
6 from any contract that you have with any company  
7 at this time?

8 THE DEPONENT: Not at this time I'm not  
9 receiving any.

10 MR. REGIER: Do you have income due you  
11 under a retirement contract at this time?

12 THE DEPONENT: No, no.

13 MR. REGIER: Is there any that will be due  
14 you at a specific age in the future?

15 THE DEPONENT: Presumably General Cigar  
16 Company at the age of sixty-five.

17 MR. REGIER: Are there any others?

18 THE DEPONENT: None.

19 MR. REGIER: When did you cease owning  
20 automobiles?

21 THE DEPONENT: Oh, a long time ago. Probably  
22 ten years ago.

23 MR. REGIER: How many automobiles does your  
24 wife own?

25 THE DEPONENT: One.

1 MR. REGIER: Do you own any boats?

2 THE DEPONENT: No.

3 MR. REGIER: Do you own any horses?

4 THE DEPONENT: Not at the moment.

5 MR. REGIER: When was the last time you owned  
6 horses?

7 THE DEPONENT: Recently. (To Mr. Manry)  
8 Should I explain this?

9 MR. MANRY: He asked you whether now -- when  
10 was the last time. What was the last date you  
11 owned a horse.

12 THE DEPONENT: The last date I owned a horse  
13 was last Saturday.

14 MR. REGIER: Last Saturday? What kind of  
15 horse did you have at that time?

16 THE DEPONENT: Thoroughbred.

17 MR. REGIER: Did you sell him?

18 THE DEPONENT: No.

19 MR. REGIER: Did you give him away?

20 THE DEPONENT: Yes.

21 MR. REGIER: To whom did you give him?

22 THE DEPONENT: Manuel Torres.\*

23 MR. REGIER: What relationship is he to you?

24 THE DEPONENT: He was my trainer.

25 \* Phonetic Spelling

1 MR. REGIER: What was the value of that  
2 horse?

3 THE DEPONENT: A few thousand dollars.

4 MR. KOVNER: May I interrupt at this point?  
5 On the horses in your tax return you show --

6 THE DEPONENT: Whatever I show I've given  
7 away.

8 MR. KOVNER: -- you show on your schedule  
9 of depreciation a cost of horses.

10 THE DEPONENT: What year is that?

11 MR. KOVNER: '73, at just under \$300,000.

12 THE DEPONENT: Cost of horses?

13 MR. KOVNER: Race horses, horses-breeding,  
14 cost, 288 -- I'm sorry, I misread it.

15 THE DEPONENT: God.

16 MR. KOVNER: 28,000.

17 THE DEPONENT: I only wish it was something  
18 like that, God, please.

19 MR. MANRY: Can you identify that for the  
20 record?

21 MR. KOVNER: Yes.

22 MR. MANRY: Depreciation schedule '73 return?

23 MR. KOVNER: Yes. It's page two of  
24 Schedule F. And it's approximately \$30,000  
25 investment in race horses.

1 THE DEPONENT: Uh-hum.

2 MR. KOVNER: How many horses did you have  
3 at that time?

4 THE DEPONENT: Does it mention the name of  
5 the horses?

6 MR. KOVNER: Does not. It says, "Race horses,  
7 dash, breeding. Greyhound racing," which is a  
8 \$1,500 item which appears to be something else.

9 MR. MANRY: Let me see it for a minute.

10 THE DEPONENT: I'll be glad to tell you  
11 about the horses.

12 MR. MANRY: Let him ask you a question.

13 MR. KOVNER: How many horses did you own in  
14 '73?

15 THE DEPONENT: I don't know. Probably --  
16 what does it say? Probably five or six, something  
17 like that.

18 MR. KOVNER: What gifts of horses have you  
19 made within the past three months?

20 THE DEPONENT: Well, you've got to realize --  
21 don't put this down.

22 MR. KOVNER: Off the record.

23 (Discussion off the record.)

24 MR. KOVNER: What gifts of horses did you  
25 make within the past two years, to the best of



1 your recollection?

2 MR. MANRY: Answer the question.

3 THE DEPONENT: Oh --

4 MR. MANRY: If you can remember it, say; if  
5 not --

6 THE DEPONENT: Nothing of any consequence.

7 MR. MANRY: No. If you can remember he's  
8 entitled to an answer, a specific --

9 THE DEPONENT: The only horse that that  
10 covers is a stallion that was sold. That was all,  
11 that's the main thing.

12 MR. MANRY: Now, you say that that covers.  
13 You're talking about this schedule?

14 THE DEPONENT: That's the main thing, that  
15 stallion who was near death and was sold for next  
16 to nothing. But I can't remember the names of  
17 horses. God, I can't remember the names of horses.  
18 A horse gets lame, or infirm, or a mare aborts,  
19 you just get rid of them.

20 MR. KOVNER: Do you remember the names of  
21 people to whom you've given horses within the  
22 past few years?

23 THE DEPONENT: Maney Torres.

24 MR. KOVNER: Anybody else?

25 THE DEPONENT: Robert Atwood. He was also a

1       trainer of mine. Martin Crouse, Denise Robinson.  
2       That's about it.

3       MR. KOVNER: Did you give more than one horse  
4       to any of these people?

5       THE DEPONENT: I gave two horses to Denise  
6       Robinson.

7       MR. KOVNER: Do these people all reside in  
8       Tampa?

9       THE DEPONENT: No. I don't know where Atwood  
10      is; Torres lives in Lauderdale; Denise Robinson  
11      lives in town.

12      But, fellows, this is such a pittance,  
13      nothing. You're wasting time over nothing. I'd  
14      give you a horse if I had one, if you wanted to  
15      pay for the feed bill.

16      MR. REGIER: If I weren't on this side of  
17      the table I would probably welcome that.

18      MR. MANRY: Morty, it's irrelevant. That's  
19      understood.

20      THE DEPONENT: I'd be glad to --

21      MR. KOVNER: Do you own any airplanes?

22      THE DEPONENT: -- but you're talking about  
23      nothing.

24      MR. KOVNER: Do you have a personal bookkeeper,  
25      accountant or bookkeeper?

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THE DEPONENT: Yes.

MR. KOVNER: Do you have an accountant and a bookkeeper or are they one and the same?

THE DEPONENT: No, they are two.

MR. KOVNER: Who is your bookkeeper?

THE DEPONENT: Mrs. Riffe.

MR. KOVNER: She is the one that you also named as your secretary?

THE DEPONENT: I don't think I can really say she's my bookkeeper. I don't have a bookkeeper. That's not correct. She collates my records and sends them to my accountant but she's not a bookkeeper.

MR. KOVNER: What's the name again?

THE DEPONENT: Riffe, R-i-f-f-e.

MR. KOVNER: She resides in Tampa?

THE DEPONENT: Yeah.

MR. KOVNER: Who is your accountant?

THE DEPONENT: Leon Walsh.

MR. REGIER: Is he a CPA?

THE DEPONENT: Yes.

MR. REGIER: Is he with a national firm?

THE DEPONENT: No, local firm.

MR. KOVNER: It's on here. (Indicating document.)

1 MR. REGIER: Is your home mortgaged?

2 THE DEPONENT: No.

3 MR. KOVNER: When did you acquire it?

4 THE DEPONENT: Fourteen years ago.

5 MR. KOVNER: What was the purchase price?

6 THE DEPONENT: \$50,000.

7 MR. KOVNER: Is it held in joint names?

8 THE DEPONENT: Yes.

9 MR. REGIER: From whom did you purchase that  
10 property?

11 THE DEPONENT: A person named Morton Gould,  
12 G-o-u-l-d.

13 MR. REGIER: Is he related to you in any way,  
14 or a previous acquaintance?

15 THE DEPONENT: No, no. I knew him but --

16 MR. REGIER: Was he an acquaintance of long-  
17 standing?

18 THE DEPONENT: No.

19 MR. REGIER: Off the record, please.

20 (Discussion off the record.)

21 MR. KOVNER: Let me say, if you recall the  
22 other agent through whom you sold the six Renoirs  
23 you will call your attorney and he will provide  
24 them to us?

25 THE DEPONENT: I've got his name somewhere.



1 MR. MANRY: I'll provide it. Not willingly,  
2 but --

3 THE DEPONENT: I'll be glad to. I'm just  
4 not a very good person on names.

5 MR. REGIER: What banks do you have accounts  
6 in?

7 THE DEPONENT: First National, Exchange.

8 MR. REGIER: Is that a checking account?

9 THE DEPONENT: Uh-huh.

10 MR. REGIER: Is it in your name or in a  
11 joint name?

12 THE DEPONENT: Joint names.

13 MR. REGIER: And who is the joint holder?

14 THE DEPONENT: My wife.

15 MR. REGIER: What is her full name?

16 THE DEPONENT: Marion Roberts Annis.

17 MR. REGIER: Approximately what is the  
18 balance in that account?

19 THE DEPONENT: Very small.

20 MR. REGIER: Once again, I'm confused by  
21 that.

22 MR. MANRY: When you say -- do you know  
23 approximal --

24 THE DEPONENT: I'd say a couple thousand  
25 dollars.

1 MR. KOVNER: That's in First National?

2 THE DEPONENT: Both.

3 MR. KOVNER: A couple thousand in each?

4 THE DEPONENT: Oh, no, I'd say joint.

5 MR. MANRY: Between the two accounts you'd  
6 say a couple thousand?

7 THE DEPONENT: (Nodded affirmatively.)

8 MR. REGIER: And both of those accounts are  
9 in the same bank?

10 MR. MANRY: No, one's First National Bank  
11 of Tampa and the other is the Exchange National  
12 Bank.

13 MR. REGIER: Okay, thank you. Do you have  
14 any savings accounts?

15 THE DEPONENT: No.

16 MR. REGIER: In savings and loans?

17 THE DEPONENT: No.

18 MR. REGIER: Certificates of deposit?

19 THE DEPONENT: No.

20 MR. MANRY: One thing, mentioning banks, a  
21 while back he said the Marine Bank. That has  
22 now been changed, it's the Flagship Bank.  
23 Everybody still calls it the Marine but it's now  
24 part of the Flagship holding company, so --

25 MR. REGIER: Do you have any savings bonds?

1 THE DEPONENT: No.

2 MR. REGIER: Do you have any accounts in  
3 foreign banks --

4 THE DEPONENT: No.

5 MR. REGIER: -- or institutions in other  
6 countries?

7 THE DEPONENT: No.

8 MR. REGIER: Do you have a brokerage account  
9 with any stock broker, even though you don't have  
10 a portfolio at the moment?

11 THE DEPONENT: No brokerage accounts.

12 MR. REGIER: (To Mr. Kovner) Why don't you  
13 go with your tax questions and --

14 MR. KOVNER: While I'm doing that do you  
15 want to start to go through this? I don't know  
16 what we're going to do with that.

17 MR. REGIER: Let me continue with this and  
18 then I'll see.

19 MR. KOVNER: Okay. Mr. Annis, I'm going to  
20 ask you first some questions in connection with  
21 your '73 return.

22 MR. REGIER: We haven't made these part of  
23 the record yet.

24 MR. KOVNER: This would be Exhibit Five,  
25 1973 joint return of Morton and Marion Annis.

1 (Plaintiff's Exhibit Five was marked for  
2 Identification.)

3 MR. KOVNER: There's a reference to a  
4 deduction for bank custody and trust fees in the  
5 amount of just under \$1,500. Do you know what  
6 bank and what trusts those were referring to?

7 THE DEPONENT: No, I have no idea.

8 MR. KOVNER: Is your wife a trustee, outside  
9 of those two trusts you referred to before of  
10 which you are still total beneficiary?

11 THE DEPONENT: She has her own assets.

12 MR. KOVNER: Is she a trustee of any other  
13 trusts other than the beneficiary --

14 THE DEPONENT: No, I don't think so.

15 MR. KOVNER: There's interest expense of  
16 \$79,000 listed. 24,000, approximately, with the  
17 First National Bank of Tampa. What is the  
18 indebtedness of the First National Bank of Tampa?

19 THE DEPONENT: They charge ten percent, so  
20 you can figure it.

21 MR. KOVNER: So it's approximately \$240,000?

22 THE DEPONENT: It was at that time.

23 MR. KOVNER: What is it today?

24 THE DEPONENT: 45.

25 MR. KOVNER: 45,000?

1 THE DEPONENT: Something like that, yeah.

2 MR. KOVNER: Do you know from what assets  
3 you reduced that indebtedness by approximately  
4 \$200,000?

5 THE DEPONENT: That was all collateralized.  
6 The bank forced the sale of collateral.

7 MR. KOVNER: Do you know what the collateral  
8 was?

9 THE DEPONENT: Commercial papers of some  
10 sort.

11 MR. KOVNER: Do you recall when you borrowed  
12 this \$240,000?

13 THE DEPONENT: A long time ago.

14 MR. KOVNER: About ten years ago?

15 THE DEPONENT: Hmm, probably.

16 MR. KOVNER: There's an indebted letter or  
17 interest expense, I'm sorry, here of \$10,000 for  
18 the Exchange National Bank. Does that reflect  
19 approximately \$100,000 of indebtedness?

20 THE DEPONENT: Yes.

21 MR. KOVNER: What is that indebtedness today?

22 THE DEPONENT: More -- no, excuse me, that's  
23 wrong. 30, I believe. I don't know. I don't  
24 recall exact figures.

25 MR. KOVNER: Is that collateralized?



1 THE DEPONENT: Yeah.

2 MR. KOVNER: By what?

3 THE DEPONENT: Commercial documents.

4 MR. KOVNER: Commercial papers?

5 THE DEPONENT: Probably.

6 MR. KOVNER: Of major corporations?

7 THE DEPONENT: No, of banks.

8 MR. KOVNER: Is the \$45,000 outstanding to  
9 First National collateralized?

10 THE DEPONENT: No.

11 MR. KOVNER: Do you remember when you  
12 borrowed the 100,000 from the Exchange?

13 THE DEPONENT: A long time ago.

14 MR. KOVNER: About ten years?

15 THE DEPONENT: Possibly.

16 MR. KOVNER: More than five years?

17 THE DEPONENT: Oh, definitely.

18 MR. KOVNER: There is \$5,000 of interest  
19 expense for the Marine Bank of Tampa, now the  
20 Flagship.

21 MR. MANRY: That's now Flagship. Change of  
22 name. It's a Flagship holding corporation, it's  
23 a member bank.

24 MR. KOVNER: Does that reflect approximately  
25 \$52,000 of indebtedness?

1 THE DEPONENT: Yeah.

2 MR. KOVNER: What is that indebtedness now?

3 THE DEPONENT: Same. A little less, maybe,  
4 a few thousand dollars less.

5 MR. KOVNER: Is it collateralized?

6 THE DEPONENT: Yes.

7 MR. KOVNER: By what?

8 THE DEPONENT: Stock. I don't recall, I  
9 don't recall. There's collateral. I'll have to  
10 find out for you. I don't recall at the moment.

11 MR. KOVNER: Not by commercial paper?

12 THE DEPONENT: No, it is not commercial  
13 paper.

14 MR. KOVNER: There's \$17,000 of interest  
15 expense for the National Life of Vermont. What  
16 was the indebtedness?

17 THE DEPONENT: There's no indebtedness,  
18 that's life insurance.

19 MR. KOVNER: That's life insurance?

20 THE DEPONENT: Uh-huh.

21 MR. KOVNER: What is the value of -- what is  
22 the life insurance that you have with the  
23 National Life of Vermont?

24 THE DEPONENT: What is the --

25 MR. KOVNER: Could you describe it? Is it

1 term, is it straight life? Who owns it?

2 THE DEPONENT: It's owned by my wife. It  
3 is -- many years ago -- probably fourteen or  
4 fifteen years old.

5 MR. KOVNER: What's the face amount?

6 THE DEPONENT: It is a term borrowing  
7 concept of some \$500,000.

8 MR. REGIER: Has it always been owned by her,  
9 or --

10 THE DEPONENT: Yes, always.

11 MR. REGIER: When you say owned by her, you  
12 know, there's a difference between owned by and --

13 THE DEPONENT: I am very aware of it. And  
14 it was not set up. It was set up by my insurance  
15 man many many years ago. And that was the first  
16 "gambit" that she owned. Certainly fifteen years  
17 ago, fourteen.

18 MR. KOVNER: The next item of interest  
19 expense is 17,500 to the National Bank of North  
20 America. Does that reflect an underlying  
21 indebtedness?

22 THE DEPONENT: Default of Inter-Continental.

23 MR. KOVNER: In the amount of \$150,000?

24 THE DEPONENT: I can't recall.

25 MR. KOVNER: What amount is now outstanding

1 on that?

2 THE DEPONENT: 10.

3 MR. KOVNER: \$10,000?

4 THE DEPONENT: Uh-hum. They forced the sale  
5 of collateral.

6 MR. KOVNER: When you say forced the sale of  
7 collateral, is that meaning liquor?

8 THE DEPONENT: Yeah. They forced the sale  
9 of this collateral.

10 MR. KOVNER: After the sale of collateral  
11 instead of roughly \$150,000 there was \$17,000  
12 still owing?

13 THE DEPONENT: 10, 15, something like that.

14 MR. KOVNER: Anybody else obligated under a  
15 guarantor to the National Bank?

16 THE DEPONENT: Certainly, Cazin and Fellman\*.

17 MR. KOVNER: Do you know whether or not that  
18 was an obligation that Fellman discharged in his  
19 present bankruptcy?

20 THE DEPONENT: I do not know.

21 MR. KOVNER: Okay. And I see an interest  
22 expense of \$2,000 to the Seminole Bank of Tampa.  
23 Would that reflect an underlying indebtedness of  
24 about \$20,000?

25 \* Phonetic Spelling

1 THE DEPONENT: I imagine so.

2 MR. KOVNER: What is it today?

3 THE DEPONENT: Nothing.

4 MR. KOVNER: Paid off?

5 THE DEPONENT: Well, we were -- maybe \$5,000.

6 MR. KOVNER: Do you recall the source of the  
7 funds with which it was paid off?

8 THE DEPONENT: Other borrowings from the  
9 Exchange.

10 MR. KOVNER: Is there any collateral on the  
11 remaining?

12 THE DEPONENT: No.

13 MR. KOVNER: There is an interest expense  
14 of Southwest Bank, \$500.

15 THE DEPONENT: Old, old obligation for many  
16 many years.

17 MR. KOVNER: Is it still outstanding?

18 THE DEPONENT: Yes. Very small amount.

19 MR. KOVNER: How much? Under \$5,000?

20 THE DEPONENT: I believe so. I'm not sure.  
21 Very small.

22 MR. KOVNER: There's a reference to Guardian  
23 Life. Is that life insurance?

24 THE DEPONENT: (Nodded affirmatively.)

25 MR. KOVNER: Could you describe that



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1 insurance?

2 THE DEPONENT: No, I can't.

3 MR. KOVNER: Do you own it?

4 THE DEPONENT: No.

5 MR. KOVNER: Does your wife own it?

6 THE DEPONENT: Yes.

7 MR. KOVNER: You don't know the face amount?

8 THE DEPONENT: Small amount, to my knowledge.

9 MR. KOVNER: There's one of just under  
10 \$1,500 of Kansas City Life.

11 THE DEPONENT: Same.

12 MR. KOVNER: It's your wife's and you can't  
13 describe it?

14 THE DEPONENT: That's right.

15 MR. KOVNER: There's an item here of other  
16 interests, \$17,000. Do you know what other  
17 interest --

18 THE DEPONENT: Possibly the money on the  
19 collateral which I was forced to sell.

20 MR. KOVNER: I'm sorry, which collateral?

21 THE DEPONENT: The collateral that I  
22 described before.

23 MR. KOVNER: But there you had already taken  
24 \$17,000 of interest which was paid to the National  
25 Bank of North America. Are you suggesting that

1 there was a further \$17,000?

2 THE DEPONENT: No, I'm suggesting one washes  
3 the other.

4 MR. KOVNER: This is additional interest  
5 expense not interest income?

6 THE DEPONENT: Interest expense.

7 MR. KOVNER: All of this is interest expense?

8 THE DEPONENT: Additional -- how is it  
9 marked, "Other"?

10 MR. KOVNER: Other interest, 17,000.

11 THE DEPONENT: Interest that I paid?

12 MR. KOVNER: Yes.

13 THE DEPONENT: Is there a continuation sheet?

14 MR. KOVNER: No. Let me see how it's  
15 characterized in the earlier years.

16 THE DEPONENT: I would have no idea.

17 (The above proceedings recessed from 2:38  
18 till 2:45 p.m. Reporter read the question.)

19 MR. KOVNER: It appears to be just  
20 characterized as other interest. Do you know  
21 now what that refers to?

22 THE DEPONENT: I don't know what it refers to.

23 MR. KOVNER: All right. Are there other  
24 indebtednesses upon which you are paying interest  
25 other than the various banks and life insurance

1 companies that we've just covered here? Are  
2 there other obligations that you owe on which  
3 you owe interest, outside of the judgment in this  
4 case?

5 THE DEPONENT: Well, there are other  
6 obligations that I have taken on.

7 MR. KOVNER: Could you enumerate them?

8 THE DEPONENT: Paying the -- paying the  
9 interest on the children's notes.

10 MR. KOVNER: That's in the amount of 98,000  
11 each?

12 THE DEPONENT: Right.

13 MR. KOVNER: Anything else?

14 THE DEPONENT: I don't believe so.

15 MR. KOVNER: In '71 and '72 there is a  
16 reference to a Gardenia loan. Would you say  
17 what that was? Interest paid on a Gardenia  
18 loan, will you tell me what that was and  
19 whether it's still outstanding?

20 THE DEPONENT: No, it's presently the  
21 Inter-Continental situation.

22 MR. KOVNER: How is Inter-Continental  
23 related to Gardenia?

24 THE DEPONENT: I'm going to have to strike  
25 that, that was -- I don't think that was a

1 correct statement on my part. Would you repeat  
2 it again, sir?

3 MR. KOVNER: In 1971 and 1972 there are  
4 items of interest paid, one for the Bankers Trust  
5 Company, paren, Gardenia loan, in the amount of  
6 \$7,000, in '71; and National Bank of North  
7 America, paren, Gardenia, in the amount of  
8 19,000 in 1972.

9 THE DEPONENT: And your question is what  
10 were those transactions?

11 MR. KOVNER: What were the obligations?  
12 What Gardenia obligations were you paying interest  
13 on in those years?

14 THE DEPONENT: I must be frank and tell you  
15 I can't recall.

16 MR. KOVNER: And you don't know whether  
17 those related to the Inter-Continental --

18 THE DEPONENT: I don't recall.

19 MR. KOVNER: In '73, Schedule C, there's a  
20 reference to expenses in connection with New York  
21 apartment which is maintained by tax payer. What  
22 apartment is that?

23 THE DEPONENT: Well, I had an apartment in  
24 New York which was necessary. Rented an apartment.

25 MR. KOVNER: Do you continue to rent it?

1 THE DEPONENT: No longer.

2 MR. KOVNER: Where was it?

3 THE DEPONENT: What's the date?

4 MR. KOVNER: '73.

5 THE DEPONENT: I think that was on -- let  
6 me check the dates. There have been two rental  
7 apartments, one which my -- I believe '73 -- '73,  
8 '74, '75. That was either on 100 East 60th Street  
9 or 200 East 64th. I don't recall the date of  
10 moving.

11 MR. KOVNER: Were either of those apartments  
12 corporative apartments?

13 THE DEPONENT: No, they were rentals which  
14 my wife lived -- well no, that's not true -- which  
15 she visited and she fixed up and the children  
16 used and I used it as business required.

17 MR. KOVNER: There's a reference to sale of  
18 shares in the "Mandella" --

19 THE DEPONENT: Mandale.

20 MR. KOVNER: Is that a publicly-held  
21 company?

22 THE DEPONENT: No.

23 MR. KOVNER: What were the circumstances of  
24 your investment in Mandale?

25 THE DEPONENT: President of General Cigar



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1 Company, Edgar Kullin, K-u-double-l-i-n, who was  
2 married to the Bloomingdale girl, put together  
3 some money to rent to Manhattan Shirt or Mandale.  
4 It was sort of a convertible stock situation. It  
5 cost me \$5,000 in investment as the stock market  
6 started to fall and Manhattan Shirts started to  
7 fall faster than the stock market. And I sold my  
8 position.

9 MR. KOVNER: You never had any operating  
10 role or compensation from it?

11 THE DEPONENT: No.

12 MR. KOVNER: In your 1972 return you show  
13 interest --

14 MR. REGIER: Do you want to make that part  
15 of the record?

16 MR. KOVNER: Let's have the 1972 marked as  
17 Exhibit Six.

18 (Plaintiff's Exhibit Six was marked for  
19 Identification.)

20 MR. KOVNER: You show interest income of  
21 \$23,000 from General Telephone. What securities  
22 of General Telephone did you --

23 THE DEPONENT: That was not a security --  
24 that is a misnomer -- that was what is called the  
25 General Telephone variable fund which the banks

1 in Tampa have whereby they lend money to General  
2 Telephone and Tampa Electric.

3 MR. KOVNER: How much of the variable fund  
4 did you own?

5 THE DEPONENT: I have no recollection.

6 MR. KOVNER: Did you sell your interest in  
7 the variable fund?

8 THE DEPONENT: I liquidated it, I assume.

9 MR. KOVNER: Do you remember the proceeds?

10 THE DEPONENT: No.

11 MR. KOVNER: There's no reference -- off the  
12 record.

13 (Discussion off the record.)

14 MR. KOVNER: Back on the record. When did  
15 you sell your interest in the fund?

16 THE DEPONENT: Would you advise me on this,  
17 please?

18 MR. MANRY: If you sold your interest in  
19 the fund, tell him when you sold it.

20 THE DEPONENT: But it was not a fund.

21 MR. KOVNER: What was it?

22 THE DEPONENT: May I explain?

23 MR. MANRY: Go ahead and explain.

24 THE DEPONENT: In the city of Tampa, and  
25 probably other cities, the two leading banks, the

1 First National, Exchange, have what is called  
2 variable funds whereby the utility companies --  
3 Tampa Electric and General Tel -- borrow money  
4 daily. You can put money in one day and come up  
5 the next day. And it's just like short term  
6 notes. Not even short term notes, it's a daily  
7 interest item. And you put money in and take it  
8 out. You don't buy anything, you don't buy any  
9 securities, it's just --

10 MR. KOVNER: When did you take your money  
11 out of the fund?

12 THE DEPONENT: I have no idea.

13 MR. KOVNER: Do you still have money in that  
14 fund?

15 THE DEPONENT: No.

16 MR. KOVNER: On an interest income of  
17 \$23,000 would that lead you to conclude how much  
18 money you invested in the fund?

19 THE DEPONENT: I have no recollection of what  
20 the return was on the value. The value on the  
21 Exchange changes day-to-day.

22 MR. KOVNER: There's a reference of \$12,437  
23 on Federal National Mortgage Company bonds. Do  
24 you know the face value of the bonds you own?

25 THE DEPONENT: That was the children's money.

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1 MR. KOVNER: The children's money?

2 THE DEPONENT: Yes.

3 MR. KOVNER: At the time of the notes in  
4 Exhibits One and Two --

5 THE DEPONENT: It has reference in some way  
6 to the children's situation.

7 MR. KOVNER: -- do you know how many of  
8 those bonds you owned?

9 THE DEPONENT: I would assume the total  
10 amount. Not that I owned, but that was owned by  
11 the children.

12 MR. KOVNER: You reported interest of  
13 \$12,487. I'm asking how much, what was the face  
14 value of the bonds you owned?

15 THE DEPONENT: What are the bonds?

16 MR. KOVNER: Federal National Mortgage  
17 Company.

18 THE DEPONENT: \$12,000? It doesn't seem to  
19 work out. I don't know what it is. It doesn't  
20 pertain.

21 MR. KOVNER: You don't hold any of those  
22 bonds today?

23 THE DEPONENT: No, I do not.

24 MR. KOVNER: When did you sell them?

25 THE DEPONENT: I don't recall ever owning any.

1 MR. KOVNER: You don't recall ever owning  
2 any?

3 THE DEPONENT: Personally, no.

4 MR. KOVNER: Did your wife ever own them?

5 THE DEPONENT: No. \$12,000?

6 MR. KOVNER: Of interest.

7 MR. MANRY: Of interest.

8 THE DEPONENT: Well, of interest. If it was  
9 in the children's funds it would be --

10 MR. MANRY: It wouldn't be on your tax  
11 returns.

12 THE DEPONENT: No. I think that is, frankly  
13 an error on the part of the accountant because I  
14 don't think you'll find another interest thing  
15 on that. But I did not own them. What year is  
16 that?

17 MR. KOVNER: '72.

18 THE DEPONENT: I don't know.

19 MR. KOVNER: I'd like to have the 1971  
20 return marked as Plaintiff's Exhibit Seven.

21 (Plaintiff's Exhibit Seven was marked for  
22 Identification.)

23 MR. KOVNER: There's a reference here to an  
24 oil well venture.

25 THE DEPONENT: Yes.



1 MR. KOVNER: Do you have any continuing  
2 interest in that venture?

3 THE DEPONENT: I wish I did. Regrettably, no.  
4 All that we got was natural gas, which I didn't  
5 want. Believe it or not, '71, can you imagine  
6 that?

7 MR. MARRY: Off the record.

8 (The above proceedings recessed at 3:00  
9 and resumed at 3:07 p.m.)

10 MR. KOVNER: Okay, back on the record. In  
11 schedule of capital gains and losses in '71 they  
12 reflect a number of sales of public utilities;  
13 Tampa public utilities and municipal bonds, New  
14 York State, New Jersey, Massachusetts Turnpike,  
15 et cetera, for a gross sales price of \$328,000.  
16 Do you recall where that -- those proceeds went?

17 THE DEPONENT: I guess they went to pay the  
18 Inter-Continental debt. I assume the great  
19 majority of them did.

20 MR. KOVNER: Do you have any rough estimate  
21 of how much of the Inter-Continental indebtedness  
22 you paid?

23 THE DEPONENT: Substantial.

24 MR. KOVNER: Was it more than \$500,000?

25 THE DEPONENT: I would think so.

1 MR. KOVNER: Was it more than \$1,000,000?

2 THE DEPONENT: No.

3 MR. KOVNER: Do you have anything on these?

4 MR. REGIER: No, not that you haven't already  
5 hit.

6 MR. KOVNER: Do you want to go on? I'll take  
7 a look at these over here.

8 MR. REGIER: All right. Awhile ago we were  
9 talking about accounts and assets, things like  
10 that, that you said that you did not own. What  
11 accounts does your wife have? For instance,  
12 savings accounts.

13 THE DEPONENT: What accounts does my wife  
14 have?

15 MR. REGIER: Yes.

16 THE DEPONENT: My wife has a series of  
17 accounts. I'm not aware of the amounts or the  
18 location.

19 MR. REGIER: Are these accounts that she has  
20 acquired in recent years?

21 THE DEPONENT: No.

22 MR. REGIER: Have they been substantially  
23 enlarged in recent years?

24 THE DEPONENT: I wouldn't think so.

25 MR. REGIER: Does she own any certificates of

1 deposit?

2 THE DEPONENT: I do not know.

3 MR. REGIER: Does she own any land?

4 THE DEPONENT: No, she owns no land.

5 MR. REGIER: Other than the joint ownership  
6 of your residence?

7 THE DEPONENT: No, she owns no real estate.

8 MR. REGIER: Then you have no knowledge of  
9 the whereabouts or the amounts of her accounts,  
10 her savings accounts and checking accounts, that  
11 do not have your name on it?

12 THE DEPONENT: She has an account at the  
13 Flagship Bank, I'm aware of that.

14 MR. REGIER: Is that a substantial account,  
15 meaning more than \$10,000?

16 THE DEPONENT: I would say around 10. I  
17 don't know, I'm just guessing. I don't happen to  
18 inquire into my wife's affairs.

19 MR. REGIER: What gifts have you made to your  
20 wife in the last three years --

21 THE DEPONENT: None.

22 MR. REGIER: -- that had a value in excess  
23 of \$5,000?

24 THE DEPONENT: None, none.

25 MR. REGIER: What gifts have you made to your

1 children in the last five years in amounts of  
2 in excess of \$5,000?

3 THE DEPONENT: Each? None.

4 MR. REGIER: Other than the 72,000 that  
5 you've already told us about in the last three  
6 years.

7 THE DEPONENT: Are you talking about gifts  
8 under the tax exemption of \$6,000?

9 MR. MANRY: Other than that.

10 MR. REGIER: I'm talking about other than  
11 that.

12 THE DEPONENT: No, nothing other than the  
13 \$6,000's annual exemption for each child.

14 MR. REGIER: And that includes not only  
15 stocks or cash gifts but --

16 THE DEPONENT: Everything.

17 MR. REGIER: -- but tangible --

18 THE DEPONENT: Correct.

19 MR. REGIER: -- real property, personal  
20 property?

21 THE DEPONENT: Correct, correct.

22 MR. MANRY: I don't think any real property  
23 was involved, but you're discussing general assets,  
24 I take it, that might have been involved in the  
25 gifts?



1 MR. REGIER: I was describing real property  
2 or personal property other than stocks and cash.

3 MR. MANRY: All right. Have you given them  
4 any real property?

5 THE DEPONENT: What is real property?

6 MR. MANRY: Real estate.

7 THE DEPONENT: No.

8 MR. MANRY: The gifts have been tangible  
9 personal property?

10 THE DEPONENT: Yeah.

11 MR. MANRY: Money?

12 THE DEPONENT: Tangible personal property.

13 MR. MANRY: Okay. I just don't want it to  
14 appear that he gave real estate if he did not  
15 give real estate.

16 MR. REGIER: Okay. Have you given paintings  
17 or art objects of any sort to your children in  
18 the last three years?

19 THE DEPONENT: In the last three years?

20 MR. REGIER: Values, let's say, in excess of  
21 \$1,000.

22 THE DEPONENT: Oh, no, nothing of any  
23 substantial value. \$1,000, maybe \$1,200, but  
24 nothing big.

25 MR. MANRY: Christmas gifts, or things like



1 that, birthday?

2 THE DEPONENT: Well, you know, you give them  
3 a gift if they like something. But within the  
4 \$6,000's exemption, which I have records of.  
5 That's it, nothing big.

6 MR. REGIER: Does your wife have life  
7 insurance policies on her life?

8 THE DEPONENT: Yes.

9 MR. REGIER: Do you own those?

10 THE DEPONENT: No.

11 MR. REGIER: Who owns the policies?

12 THE DEPONENT: She owns them.

13 MR. REGIER: On her life?

14 THE DEPONENT: She owns all the policies.

15 MR. REGIER: Who makes the payments on the  
16 premiums?

17 THE DEPONENT: I do.

18 MR. REGIER: What is the face amount of  
19 those policies?

20 THE DEPONENT: On her life?

21 MR. REGIER: Uh-hum.

22 THE DEPONENT: I don't know. Substantial.

23 MR. REGIER: In excess of \$50,000?

24 THE DEPONENT: Yes.

25 MR. REGIER: In excess of \$100,000?

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1 THE DEPONENT: I would say so.

2 MR. REGIER: Are you a beneficiary?

3 THE DEPONENT: I think the children are.

4 Not having seen the policies for many many years  
5 I don't know. I would assume that it would only  
6 be wise that the children would be beneficiaries.

7 MR. REGIER: Off the record.

8 (Discussion off the record.)

9 MR. REGIER: What other life insurance do you  
10 have on your life?

11 THE DEPONENT: That's the bulk of it. There  
12 may be a few very minor policies other than that,  
13 but those policies are the bulk.

14 MR. REGIER: When you say minor policies  
15 would the others that have not yet been mentioned  
16 be in excess of \$20,000?

17 THE DEPONENT: Well, there's a \$10,000  
18 National Service Life that everyone in the Army  
19 has. That's one I know. And there's an old one  
20 I have for \$2,500. That's about it.

21 MR. REGIER: Do you own life insurance  
22 policies on anyone else?

23 THE DEPONENT: No.

24 MR. REGIER: Does anyone owe you any money?  
25 Are there any notes that you hold on other people

1 or other companies?

2 THE DEPONENT: No, no.

3 MR. REGIER: Do you have a cause of action  
4 pending against anyone else?

5 THE DEPONENT: No.

6 MR. REGIER: Are there any judgments against  
7 you other than the one in this case?

8 THE DEPONENT: No.

9 MR. REGIER: Are you the beneficiary of any  
10 trusts?

11 THE DEPONENT: No.

12 MR. REGIER: Have you, to your knowledge,  
13 have you been named as a beneficiary in anyone  
14 else's will?

15 THE DEPONENT: No, no.

16 MR. REGIER: Have you created any trusts in  
17 the last five years?

18 THE DEPONENT: What is meant by that?

19 MR. REGIER: We talked about this earlier,  
20 whether or not the trusts that your children were  
21 beneficiaries of, whether you had been the set  
22 lawyer or the creator of that trust or your father  
23 had. Have you created any trusts for anyone in  
24 the last five years?

25 THE DEPONENT: (To Mr. Manry) How do you

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1 answer that?

2 MR. HARRY: Well, what he wants to know is  
3 have you taken any of your funds or any property  
4 owned by you and placed it aside in trust for  
5 someone else's benefit?

6 THE DEPONENT: No.

7 MR. REGIER: Have you suffered any casualties  
8 to property for which you have been indemnified  
9 in the last five years? Let's say substantial  
10 property over \$10,000?

11 THE DEPONENT: No, nothing over 10. One  
12 minor one, \$900, which I had to pay back, life  
13 insurance company.

14 MR. REGIER: In the last five years have you  
15 destroyed or disposed of any of your financial  
16 records or accounts of any type?

17 THE DEPONENT: No, not as far as I know.

18 MR. REGIER: Do you have any assets of any  
19 value, any substantial value -- in excess of  
20 \$10,000, let's say -- that you have not told us  
21 about so far today?

22 THE DEPONENT: No.

23 MR. REGIER: You have told us about all of  
24 your assets that have a value of greater than  
25 \$10,000?



1 MR. MANNRY: Think about it. Take your time.  
2 Remember what you told them about.

3 THE DEPONENT: Well --

4 MR. MANNRY: To your best knowledge is there  
5 anything else?

6 THE DEPONENT: Now, you have reference to  
7 whether I am sitting with securities or with --

8 MR. MANNRY: Cars, boats, house, stocks, bonds --

9 THE DEPONENT: No.

10 MR. MANNRY: Anything like that?

11 THE DEPONENT: No, I have nothing like that.

12 MR. REGIER: Have you conveyed or caused to  
13 be conveyed any assets in excess of \$10,000 to  
14 your wife in the last five years?

15 THE DEPONENT: Oh, I'm sure I have.

16 MR. REGIER: For example, what type of  
17 conveyance?

18 THE DEPONENT: I've given her gifts.

19 MR. REGIER: What kind of gifts have you  
20 given her?

21 THE DEPONENT: Ham, paintings. Not in excess  
22 of 10,000, though. Did you say in excess of  
23 \$10,000?

24 MR. REGIER: Yes.

25 THE DEPONENT: (Nodded negatively.) No.



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1 Many years ago I gave her some. No.

2 MR. REGIER: Have you caused there to be a  
3 flow of funds of any sort?

4 THE DEPONENT: To my wife? No, I haven't.

5 MR. REGIER: To your wife in the last five  
6 years.

7 THE DEPONENT: I have not siphoned any funds  
8 over to my wife dramatically, in the last five years.

9 MR. REGIER: Dramatically meaning --

10 THE DEPONENT: Of consequence.

11 MR. REGIER: Have you caused any funds to  
12 flow -- you have two children, is that correct?

13 THE DEPONENT: Correct.

14 MR. REGIER: Have you caused funds to flow  
15 to either of your children in the last five years  
16 in any substantial valued amounts?

17 THE DEPONENT: No substantial sums.

18 MR. REGIER: No amount of over \$10,000?

19 THE DEPONENT: Annually?

20 MR. REGIER: Annually.

21 THE DEPONENT: No.

22 MR. REGIER: The only amounts that you have  
23 caused to flow to them in the last five years  
24 have been those which you reported as gifts under  
25 the federal tax law?

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1 THE DEPONENT: Well, I have given them gifts  
2 of under \$5,000 that are non-reportable, but I  
3 do have ledgers on them.

4 MR. REGIER: Right, under. Do you hold  
5 mortgages --

6 THE DEPONENT: No.

7 MR. REGIER: -- on any property belonging to  
8 anyone else?

9 THE DEPONENT: No.

10 MR. REGIER: Does your wife hold mortgages?

11 THE DEPONENT: No.

12 MR. REGIER: Do you hold any legal judgments  
13 in your favor against anyone else?

14 THE DEPONENT: No.

15 MR. REGIER: Are you entitled to any current  
16 refund for federal income taxes that you've  
17 already paid?

18 THE DEPONENT: No.

19 MR. REGIER: Do you have any money in an  
20 escrow account?

21 THE DEPONENT: No.

22 MR. REGIER: Off the record.

23 (Discussion off the record.)

24 MR. KOVNER: There are a number of checks,  
25 Mr. Annis, on this Exchange National Bank account

1 that you and your wife have where you say on the  
2 stubs, "Martinique."

3 THE DEPONENT: Martinique? That's my own --

4 MR. KOVNER: Oh, that's a reference to the  
5 Martinique address.

6 MR. MANRY: Yeah. He lives at 108 Martinique.

7 MR. KOVNER: That describes that. Now, you  
8 said the New York apartment you no longer have?

9 THE DEPONENT: I canceled the lease.

10 MR. KOVNER: When did you cancel the lease?

11 THE DEPONENT: Last month.

12 MR. KOVNER: In January 5 of this year  
13 there's a reference of a deposit of \$1,450 from  
14 Master Packaging. Is that -- and there are a  
15 number of other references in recent months to  
16 Master Packaging.

17 THE DEPONENT: In January?

18 MR. KOVNER: Yeah. Would that be salary?

19 THE DEPONENT: That was probably commissions  
20 I received.

21 MR. KOVNER: For what?

22 THE DEPONENT: I don't know. For certain  
23 sales of places that I organized. January -- I  
24 don't think -- that's not right. I have no money  
25 from Master Packaging in January. That's not



1 correct.

2 MR. KOVNER: Is this an account that the  
3 Exchange -- do you keep these records or does  
4 your wife?

5 THE DEPONENT: No, my secretary keeps them.  
6 That's funny (Referring to document) Astro-Metric  
7 and Master Packaging are both the same thing. I  
8 don't know what that is. I don't know why they  
9 should both be the same.

10 MR. MANRY: Just a second. (Looking at  
11 document.) Identify that specifically, if you  
12 would.

13 MR. KOVNER: Yes. I'm asking a number of  
14 questions from the stubs of a checking account  
15 in the name of Morton and Marion Annis at the  
16 Exchange National Bank.

17 MR. MANRY: Thank you.

18 MR. KOVNER: On December 28 there was a  
19 check to Mrs. Morton Annis in the amount of  
20 \$1,500. And on a number of other occasions there  
21 have been comparable checks.

22 THE DEPONENT: Yes, that's what I gave her.

23 MR. KOVNER: When you say you gave her, is  
24 that --

25 THE DEPONENT: An allowance.

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1 MR. KOVNER: What for, household expenses?

2 THE DEPONENT: No, all of her expenses,  
3 travel, household, do what she wants to.

4 MR. KOVNER: How often do you give it to her?

5 THE DEPONENT: Once a month.

6 MR. KOVNER: Does she deposit that in a  
7 separate checking account she maintains?

8 THE DEPONENT: Yes. That's hers.

9 MR. REGIER: What was that amount?

10 MR. KOVNER: 1,500. There's a reference in  
11 December 27 to deposits from the, QUOTE, trust  
12 department, CLOSE QUOTES, in the amount of \$4,300.  
13 Do you know what trust department funds those  
14 were coming from?

15 THE DEPONENT: This was in the Exchange  
16 National Bank. It's no longer there. Certain  
17 funds which were held by the trust department for  
18 me.

19 MR. KOVNER: What funds were they?

20 THE DEPONENT: Just commercial paper.

21 MR. KOVNER: Commercial paper? Did they  
22 secure an indebtedness to the Exchange National  
23 Bank?

24 THE DEPONENT: Possibly, yes. Part of it.

25 MR. KOVNER: Indebtedness, security of debt.



1 You say they're no longer there?

2 THE DEPONENT: Most of it -- there's no --  
3 well, let me phrase it this way: Anything there  
4 is collateralized against those loans.

5 MR. KOVNER: Did you sell those securities  
6 within the past month?

7 THE DEPONENT: No.

8 MR. KOVNER: So that the amount in the trust  
9 department at the end of December would be the  
10 same amount there today?

11 THE DEPONENT: Oh, yes, unless I had withdrawn  
12 some.

13 MR. KOVNER: Have you withdrawn some from  
14 the trust department?

15 THE DEPONENT: To live, certainly. When I  
16 say the trust department -- it was just an account  
17 managed by them. It was not a trust.

18 MR. KOVNER: I see.

19 (Interruption in proceedings.)

20 MR. KOVNER: Sir, there's a reference in here  
21 to an Annis Foundation.

22 THE DEPONENT: Yes. What does it say, by the  
23 way?

24 MR. KOVNER: I think there's a deposit  
25 reference and a check to it.

1 THE DEPONENT: To my account?

2 MR. KOVNER: Yeah, in your account. A  
3 reference in the stubs.

4 THE DEPONENT: What date is that?

5 MR. KOVNER: I'll have to find it. While  
6 I'm looking for it perhaps you could describe the  
7 Annis Foundation.

8 THE DEPONENT: The Annis Foundation is a  
9 Minnie and Julius P. Annis charitable foundation  
10 which dispenses money to charity in the local  
11 area and which gives no money to any member of  
12 the family. And I would doubt it very much that  
13 any check was ever made out by me. What does it  
14 say?

15 MR. MARRY: (Indicating check) Did you  
16 deposit \$5,000, to your knowledge?

17 THE DEPONENT: I haven't given the Annis  
18 Foundation anything.

19 MR. KOVNER: Who runs the Annis Foundation?

20 THE DEPONENT: My brother.

21 MR. KOVNER: Is he the sole director?

22 THE DEPONENT: No, we're both trustees.

23 MR. KOVNER: You are the sole trustees?

24 THE DEPONENT: Yes. But I assure you that  
25 there has been no money given to the Annis

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1 Foundation by me.

2 MR. KOVNER: That would indicate that money  
3 came to you from the -- but it's probably an  
4 error, I just don't know.

5 THE DEPONENT: I would like very much to see  
6 this check. In fact, I'm going to find out  
7 because we sure as hell can't take money out of  
8 the Annis Foundation and the Annis Foundation  
9 does not give money to anyone except charities  
10 and certainly not to me.

11 MR. KOVNER: That's true. Do you know what  
12 the assets of the Annis Foundation are,  
13 approximately?

14 THE DEPONENT: Oh, yeah. It was started by  
15 my father. It's a request by my father in 1964  
16 upon his death. And I would say the assets are  
17 somewhere in excess of \$100,000.

18 Gees, I know that's carried on -- it would  
19 be great if I could go to the Annis Foundation  
20 and take five grand whenever I wanted to, but you  
21 can't do it. I'm going to check that. That's in  
22 error.

23 MR. KOVNER: There's a reference to a deposit  
24 from the Calder Racecourse.

25 THE DEPONENT: Yes.



1 MR. KOVNER: Do you know what that was?

2 THE DEPONENT: I sure do. How much is it?  
3 20?

4 MR. KOVNER: It's a few thousand. I don't  
5 have it in front of me.

6 THE DEPONENT: That was what my horse won  
7 before he became a cripple.

8 MR. KOVNER: Off the record.

9 (Discussion off the record.)

10 MR. MANRY: I represent Mr. Annis on -- not  
11 generally in this case -- I'm special counsel  
12 called in at the request of Mr. Annis and at the  
13 request of his counsel of record in this particular  
14 case to which this deposition relates. If there  
15 are any documents that fall under the subpoena  
16 within the terms of the subpoena that's been  
17 issued here, we'll furnish them at a later date.  
18 If you request any documents that do not fall  
19 reasonably within the documents prescribed there  
20 we will require an additional subpoena.

21 And we recognize the continuing nature of  
22 this proceeding. However, I do advise counsel  
23 that in the event that any further depositions  
24 are taken in this case that you serve a copy of  
25 the notice of taking deposition on New York counsel



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1 in this case rather than myself.

2 MR. KOVNER: Be happy to do that.

3 MR. MANRY: Just to make the record clear  
4 as to where I stand in this matter. And you'll  
5 get in touch with me directly on any documents  
6 that you feel fall under the subpoena. We'll do  
7 our best to comply with them.

8 MR. KOVNER: We've referred to a number of  
9 documents at the outset in connection with the  
10 track business which were discussed at the first  
11 part of the deposition, contracts of employment,  
12 contracts relating to arrangements which you may  
13 well be involved in. I think they do fall within  
14 the subpoena.

15 MR. MANRY: Well, to the extent that we have  
16 custody or control over them we will provide them.

17 MR. KOVNER: And, of course, I would want to  
18 -- since we will have to come back another time,  
19 I don't want to, however, hold Mr. Annis this  
20 afternoon any more than necessary, (To Mr. Regier)  
21 and unless you have anything further -- I would  
22 like to, this afternoon, review among the attorneys  
23 the records which are available so that we can  
24 just ask a few isolated questions rather than have  
25 you wait while we review them now.

1 THE DEPONENT: I don't want to leave counsel  
2 here, who is not aware --

3 MR. MANRY: No, what he wants to do is review  
4 these documents --

5 THE DEPONENT: Certainly.

6 MR. MANRY: -- and continue the deposition  
7 at another time. Now, they'll get in touch with  
8 me. We'll work out a date for continuation  
9 mutually agreeable to all parties concerned to  
10 continue the deposition. If they feel that they  
11 need more documents that fall within the scope of  
12 the subpoena they can send those to me, a request.  
13 If you have custody and control over them, if  
14 they're within the subpoena, we will furnish them  
15 this. If not they have other means and ways of  
16 obtaining those. Certainly corporate records you  
17 may not have. That may be corporate records that  
18 you do not have custody and control over. They  
19 will have to go elsewhere.

20 THE DEPONENT: I don't want -- look, I'm  
21 willing to cooperate.

22 MR. KOVNER: Off the record.

23 (Discussion off the record.)

24 MR. MANRY: Since we will have custody of  
25 the originals we will not require any copies of

1 the Exhibits to the deposition. We do want a  
2 copy of the deposition. And if you're going to  
3 have it typed up at this time I will suggest that  
4 we wait until the entire deposition is completed.  
5 I'll serve notice now that I will not waive  
6 signature or reading at the end.

7 MR. KOVNER: Let me say I'm happy to agree  
8 with you. I would like this typed up and executed.

9 MR. MANNRY: But it's understood that when  
10 the entire deposition is completed then he can  
11 read it rather than reading it in spurts.

12 (Discussion off the record.)

13 MR. MANNRY: Mr. Annis, you have a right to  
14 read and sign this deposition for two purposes,  
15 first of all to make sure this young lady here  
16 has taken it down correctly and any errors -- you  
17 cannot change the deposition itself but on a  
18 separate piece of paper which we attach to the  
19 deposition you can make corrections and additions.  
20 You have a right to waive this. I advise you not  
21 to waive it, I advise you to read it when it is  
22 typed up and to sign it. And I'll stipulate that  
23 -- are you going to have an original and two  
24 copies made? Are you going to file the original  
25 or not?



1 MR. KOVNER: I'll reserve my right to file  
2 it. I'm not planning to file it right now.

3 MR. MANRY: I believe under the Federal Rules  
4 you must.

5 MR. KOVNER: If I want to use it. I don't  
6 want to represent to you that I'll file it.  
7 Perhaps we'll resolve this among ourselves.

8 MR. MANRY: I think we can reach a  
9 stipulation that at the time that it's typed up  
10 send the copies out immediately. We will read  
11 a sign the original and that will suffice for  
12 the signature, if that's agreeable.

13 MR. KOVNER: That certainly is agreeable to  
14 us.

15 -----

16 Thereupon, the taking of this deposition was  
17 concluded at 3:40 p.m.

18 I have read the foregoing pages, 1  
19 through 116, inclusive, and herewith  
20 subscribe to same as a correct  
21 transcription of the answers made by  
22 me to the questions therein recorded,  
23 subject to and including the attached  
24 list of corrections.

25  
-----  
Deponent



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Deposition of Morton L. Annis dated April 4, 1975.

IN THE UNITED STATE DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

-----X  
WEITNAUER TRADING COMPANY, LTD.,  
:

Plaintiff,  
:

vs.  
:

MORTON L. ANNIS,  
:

Defendant.  
:  
:  
-----X

NO. 71 CIV 782

(RLO)

DEPOSITION OF:

MORTON L. ANNIS

TAKEN:

Pursuant to Notice by Counsel  
for Plaintiff

DATE:

April 4, 1975

TIME:

10:03 a.m. - 1:15 p.m.

PLACE:

512 Florida Avenue  
Tampa, Florida

BEFORE:

Phyllis Baugh  
Certified Shorthand Reporter  
Notary Public

COPY

Pages 1 - 104

INDEPENDENT REPORTING SERVICE

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SUITE 203, 403 MORGAN STREET

TAMPA, FLORIDA 33606

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I N D E X

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E X H I B I T S

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Seminole Bank Exhibit 2	Page 24
Plaintiff's Composite Exhibit 10	Page 33
Plaintiff's Exhibit 11	Page 36
Plaintiff's Exhibit 12	Page 39

1 The deposition of MORTON L. ANNIS, taken pursuant  
2 to Notice by Counsel for Plaintiff, on the 4th day of  
3 April, 1975, beginning at 10:03 a.m., at 512 Florida  
4 Avenue, Tampa, Hillsborough County, Florida, for the  
5 purpose of discovery, for use as evidence at the trial  
6 of this cause, or both, pursuant to the Federal Rules  
7 of Civil Procedure, before Phyllis Baugh, C.S.R.,  
8 Notary Public.

9 -----  
10 THEREUPON,

11 MORTON L. ANNIS,  
12 the deponent herein, being first duly sworn on oath,  
13 was examined and deposed as follows:

14 MR. KOVNER: Do you have some documents for  
15 us today?

16 (Discussion off the record.)

17 MR. KOVNER: Why don't we just put on the  
18 record what you have?

19 MR. MANRY: The trusts for the benefit of  
20 the children. The only documents actually in his  
21 possession are some correspondence on the balance  
22 for certain years from the Marine Bank, which is  
23 now the Flagship Bank, and I'll let you have them  
24 here and you can look over them.

25 MR. KOVNER: Okay. Do you want to put



1 everything you have on the record or do you want  
2 to go one by one?

3 MR. MANRY: I think it's easier to go one  
4 by one. I'm just suggesting this for ease of  
5 presentation.

6 MR. KOVNER: Now, the trust documents are  
7 being produced pursuant to --

8 MR. MANRY: "A."

9 MR. KOVNER: -- item "A" of the request for  
10 further production of documents dated or served  
11 March 17, 1975.

12 MR. MANRY: And there are periodic  
13 accountings from the Marine Bank, which is now  
14 the Flagship Bank.

15 MR. KOVNER: Off the record.

16 (Discussion off the record.)

17 MR. KOVNER: Shall we mark these Composite  
18 Exhibit 8, which consists of financial statements  
19 for accounts at the Flagship Bank, numbers  
20 33-01302-23, with the name Morton Annis, Jr., on  
21 it. And account 33-08520-23 with the name Susan  
22 Ehrens, E-h-r-e-n-s, on it.

23 Okay. Do you have anything else?

24 MR. MANRY: That's it.

25 MR. KOVNER: I thought we'd proceed on --



1 MR. MAHRY: Going through those? Okay, it's  
2 fine.

3 MR. KOVNER: Why don't we do that? First  
4 of all, do you want to mark this folder.

5 (Plaintiff's Composite Exhibit Number 3 was  
6 marked for Identification.)

7 DIRECT EXAMINATION

8 BY MR. KOVNER:

9 Q Mr. Annis, are you familiar with these  
10 accounts?

11 A Not really.

12 Q You're not?

13 A (Nodded negatively.)

14 Q These are produced as documents relating to  
15 trusts for the benefit of the children, presumably  
16 referring to your children. Are you familiar with  
17 these trusts?

18 A Not really.

19 Q Do you know when they were established?

20 A I don't recall the date.

21 Q Do you recall the decade in which they were  
22 established?

23 A In the '60's, I would say.

24 Q In the '60's. Do you recall by whom they  
25 were established?

1 A What do you mean by whom? By what attorney?

2 Q Or by -- who put the money or the stock  
3 into the trusts?

4 A I believe that it was done through  
5 testamentary request through my father and mother. I'm  
6 not certain, though.

7 Q So you think it was under either one of  
8 their wills that these were set up?

9 A Possibly.

10 Q And do those wills, to the best of your  
11 recollection, provide that you and some other person  
12 or persons would be the trustees?

13 A I don't recall.

14 Q Do you have copies of those wills?

15 A No.

16 Q Do you know who has the records for these  
17 trusts as to when they were created?

18 A No.

19 Q You do not?

20 A (Nodded negatively.)

21 Q Does your Counsel have any?

22 MR. MANRY: I have no knowledge.

23 A I didn't have Counsel at that time.

24 Q Where did these documents come from?

25 A From the Flagship Bank.

1 Q How come they were in your possession?

2 A Because they were sent to me because I was --  
3 I am no longer a trustee, my wife is a trustee.

4 Q I see. Does your wife have additional  
5 documents?

6 A No.

7 Q These are the only documents that you or  
8 your wife have relating to these trusts?

9 A That copy, yes.

10 Q Do you know who the other trustees are?

11 A I believe the bank -- pardon me, I don't  
12 know whether it was a trusteeship or not. I don't  
13 know whether the legal phraseology is correct, whether  
14 they're coexecutors, or coadministrators, or whatever  
15 the phrase may be. I don't know.

16 Q There's no indication on these documents of  
17 any trust relationship. How do you know that these  
18 are indeed the trust accounts, or am I missing something  
19 on here?

20 A Because of the names.

21 Q Because of the names?

22 A Yes.

23 Q And because it is in the trust department?

24 A Yes, sir.

25 MR. REGIER: Are these what the banks call

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1 management agency accounts?

2 DEPONENT: I do not know.

3 Q (By Mr. Kovner) Have you ever made any gifts  
4 to these trusts?

5 A Many years ago, yes.

6 Q Do you recall what those gifts were?

7 A The limit that could be given tax free by a  
8 husband and wife.

9 (Interruption in proceedings.)

10 MR. REGIER: In the deposition that we took  
11 from the bank representatives from the Flagship  
12 Bank --

13 DEPONENT: Yes.

14 MR. MANRY: I have not yet received a copy  
15 of those depositions.

16 MR. REGIER: -- Mr. Hanke referred to two  
17 agency accounts which the bank handles for Mr.  
18 Annis which are between Mr. Annis and his two  
19 children.

20 DEPONENT: Who is Mr. Hanke?

21 MR. REGIER: Mr. Hanke is the trust officer  
22 at the Flagship Bank and he was the one that they  
23 sent in response to our subpoena concerning  
24 records pertaining to your financial dealings  
25 with them. He was one of the three that they sent.



1 Are these two trusts that you have presented  
2 documents to us today the same two agency accounts  
3 that I was referring to?

4 MR. MANRY: Answer only if you know, don't  
5 guess.

6 DEPONENT: I don't know what -- I don't know  
7 what Hanke is referring to.

8 MR. REGIER: Do you have more than two  
9 accounts or trust-like accounts established with  
10 the Flagship Bank or in connection with you and  
11 your children with the Flagship Bank?

12 DEPONENT: No.

13 MR. REGIER: It was Mr. Hanke's testimony  
14 that -- in response to my question "What is Mr.  
15 Annis' relationship in these trust accounts or  
16 these agency accounts?" His answer was, "He's  
17 the trustee." I asked if you -- meaning you --  
18 were the sole trustee. He said, "Yes, he is."  
19 And said there was one for each of his two  
20 children. Is there a change that he is not aware  
21 of?

22 DEPONENT: I'm no longer trustee of these  
23 accounts.

24 MR. REGIER: Do these reflect that?

25 MR. KOVNER: They don't reflect anything in

1 terms of who is the trustee.

2 Q (By Mr. Kovner) When did you cease being  
3 the trustee?

4 A Month ago.

5 Q During 1975?

6 A Either that or late '74.

7 Q Did your termination or resignation as  
8 trustee, was that documented in written form?

9 A Yes.

10 Q Do you have a copy of that resignation?

11 A Not with me.

12 Q To whom was the resignation sent?

13 A Whatever the normal procedure is.

14 Q Who prepared the resignation form for you?

15 A An attorney. Whether it was an attorney  
16 from the -- the bank attorney or from this firm, I do  
17 not know.

18 Q And it's your understanding that at that  
19 point your wife replaced you as trustee?

20 A Correct.

21 Q Now, during 1974 and previously while you  
22 were trustee what activities or responsibilities did  
23 you have with respect to the management of these  
24 accounts?

25 A Very little

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1 Q Did you review their investments?

2 A No, I did not.

3 Q Did you look at the expenditures they made?

4 A I was aware of them.

5 Q I see bills on these records you've  
6 produced to Andretta Walsh and Glover, CPA. Was that  
7 the accountant that handled --

8 A (Nodded affirmatively.)

9 Q -- who was the accountant of that firm that  
10 did the work?

11 A Leon Walsh.

12 Q Does he do work for your family other than  
13 these trusts?

14 A Well, perhaps I should correct that. When  
15 I say Leon Walsh that may not be true. They're a  
16 large firm of accountants. I don't know who actually  
17 did the spade work.

18 Q Is he the partner in charge of this account?

19 A I would assume so.

20 Q And they're here in Tampa?

21 A Yes.

22 Q Does that firm or Mr. Walsh do other work  
23 for your family besides the accounting work on these  
24 trusts?

25 A Yes.

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1 Q What other work does he do for your family?

2 A Personal work.

3 Q He does your personal returns?

4 A Uh-huh.

5 Q And your wife's accounting work to the  
6 extent that's necessary?

7 A That's right.

8 Q There's a reference in the 1974 payments in  
9 Susan Ehrens trust to a payment to a Banker's  
10 Life of Nebraska policy. Are you familiar with that  
11 policy?

12 A Uh-hum.

13 Q What are its terms, to the best of your  
14 knowledge?

15 A Just a life insurance policy.

16 Q On whose life?

17 A Hers.

18 Q On her life? Who is the beneficiary?

19 A Her husband.

20 Q And his name is --

21 A Ehrens.

22 Q His first name.

23 A Arthur.

24 Q Arthur. Do you know the amount of that  
25 policy, the face value?



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1           A     The policy has been canceled, to my  
2 knowledge.

3           Q     It has been canceled?

4           A     Correct.

5           Q     There's a reference to a payment to a  
6 National Life Insurance Company policy. Are you  
7 familiar with that policy?

8           A     On whose account?

9           Q     On the 'Susan Ehrens' account.

10          A     No, I'm not.

11          Q     And payments were made -- from this record  
12 a payment of fourteen hundred dollars was made while  
13 you were trustee. Did you ask anybody what that  
14 payment was for?

15          A     Is it annotated?

16          Q     Just says "Paid National Life Insurance  
17 Company interest on policy." And there's a policy  
18 number. Do you know who would know about that policy?

19          A     Well, I think that's all part of the -- of  
20 an insurance situation where you have policies and  
21 borrow from one to pay the other, and vice versa.  
22 That's all "splitology", that's what it looks like  
23 to me.

24          Q     Is there an insurance broker who handles  
25 your family's arrangements?

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1 A Yes.

2 Q What is his name?

3 A Charles Guy.

4 Q G-u-y?

5 A Correct.

6 Q What firm is he with?

7 A His own firm.

8 Q His own firm here in Tampa?

9 A Yes.

10 Q Did your accountant prepare gift tax returns  
11 for you for the gifts that you made to these trusts  
12 since 1971?

13 A I made no gifts to these trusts since 1971.

14 Q I see. Would these be the trusts from  
15 which you borrowed funds in 1970?

16 A That's right.

17 Q Do you have records of those borrowings?

18 A Yes.

19 Q Have you produced them today or are the  
20 sole records the two letters that you produced last  
21 time?

22 A The records are at the bank.

23 Q Are they not within your control?

24 A They're at the Flagship Bank.

25 Q Right. Did you request that they provide

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1 you with those records, having received our request  
2 for document production?

3 A I've never been asked for any documentary  
4 evidence of that.

5 Q Well, in our request for further production  
6 of documents among the items listed were --

7 MR. MANRY: 1973, not 1970.

8 DEPONENT: Gentlemen, excuse me just one  
9 moment. I'll be back in -- just give me three  
10 minutes.

11 (Interruption in proceedings.)

12 (The reporter read the question.)

13 MR. KOVNER: Withdraw that question.

14 Q (By Mr. Kovner) Mr. Annis, in the statement  
15 on the Morton Annis, Jr. trust for the last quarter  
16 of 1974 there is an item indicating transfer of cash  
17 of fifteen thousand five hundred dollars out of the  
18 trust. Do you know what that fifteen thousand five  
19 hundred dollars' withdrawal was for?

20 A I would have no idea.

21 Q Did you direct it?

22 A No.

23 Q Who could have directed it while you were  
24 trustee other than you?

25 A I cannot tell you. No doubt -- off the

1 record -- I assume it was a need for cash on his  
2 personal part. He has had a rather unfortunate  
3 illness and there may have been a need for it.

4 Q I see. But if he had had the need would he  
5 not have had to ask you to direct them to release the  
6 fifteen thousand five hundred dollars?

7 A No, I don't believe so. I believe that  
8 under the -- at his age I had given my tacit approval  
9 for doing what he cared to with the funds.

10 Q I see. This is even during the period you  
11 were sole trustee?

12 A When he reached an age of, shall we say --  
13 well, he's now thirty-three -- I'd say twenty-five.

14 Q Okay.

15 MR. KOVNER: Do we want to take the man  
16 from the bank now or -- why don't we do that?  
17 I don't think he'll be very long.

18 (Proceedings recessed at 10:30 and resumed  
19 at 10:40 a.m.)

20 MR. KOVNER: To "B," "B," under the notice.

21 MR. HANRY: "All records regarding his  
22 acquisition of an interest in Master Packaging."  
23 I have the subscription agreement and an  
24 investment letter which is hooked together as a  
25 composite. Here's the envelope.



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1 MR. KOVNER: Do you want to indicate this  
2 as Number 9?

3 (Plaintiff's Composite Exhibit Number 9 was  
4 marked for Identification.)

5 Q (By Mr. Kovner) You previously testified,  
6 Mr. Annis, that at the time you purchased the shares  
7 of preferred stock in Master Packaging for fifty  
8 thousand dollars that you loaned Master Packaging  
9 fifty thousand dollars in addition.

10 A Uh-hum.

11 Q I don't see any reference in this  
12 subscription agreement or investment letter to that  
13 loan. Was this an agreement to loan that amount?

14 A Yes.

15 Q Is that in your possession or control?

16 A It is available in the company records.

17 Q It is available.

18 MR. KOVNER: Is it your position that we did not  
19 request that, Mr. Manry?

20 MR. MANRY: That's right. You requested all  
21 records regarding his acquisition of an interest  
22 in Master Packaging.

23 MR. KOVNER: I see.

24 Q (By Mr. Kovner) And it's your position that  
25 that was a loan that was unrelated to the acquisition

1 of an interest?

2 A Yes.

3 Q It's your testimony that you were not  
4 required to make that loan in order to purchase the  
5 shares?

6 A The loan was made after the transaction.

7 Q It was not part of the same transaction?

8 A (Nodded negatively.)

9 Q It was not a condition of it?

10 A The negotiations with the purchaser? No.

11 Q It was a separate deal completely?

12 A Right.

13 Q I see. Have the one hundred thousand shares  
14 of Master Packaging been transferred of record to your  
15 son, Morton Annis, Jr.?

16 A Yes.

17 MR. REGIER: What was your answer to that?

18 DEPONENT: Yes.

19 MR. KOVNER: He said yes.

20 MR. MANRY: To your knowledge.

21 DEPONENT: (Nodded affirmatively.)

22 Q Was there an opinion of Counsel for the  
23 corporation, Master Packaging, provided in connection  
24 with that transfer?

25 MR. MANRY: Do you know?

1 DEPONENT: Pardon me?

2 MR. MANRY: Do you know whether, in connection  
3 with the transfer to your son, it had anything to  
4 do with me?

5 Q Who was Counsel for Master Packaging?

6 A This firm. (Indicating Mr. Manry)

7 Q This firm?

8 MR. REGIER: Off the record, please.

9 (Discussion off the record.)

10 Q (By Mr. Kovner) Do you know when the  
11 transfer of record to your son occurred? I might add  
12 that your assignment to him is dated June 30, 1974.

13 A I don't know the exact date.

14 Q You don't know?

15 MR. REGIER: What was the value of the  
16 Master Packaging stock at the time that you made  
17 the transfer to your son?

18 MR. MANRY: Don't guess.

19 DEPONENT: Well, that's a very difficult  
20 question to answer because it's depending upon  
21 the peaks and valleys of the business.

22 MR. MANRY: Do you know?

23 DEPONENT: I have no idea as to what the  
24 value is.

25 MR. MANRY: At the time of transfer?

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1           DEPONENT: At the time of transfer or at  
2 this time.

3           MR. MANRY: Okay, that's all.

4           MR. REGIER: When we are speaking of the  
5 Master Packaging stock that you transferred to  
6 your son --

7           DEPONENT: All right, sir.

8           MR. REGIER: -- did you transfer all of your  
9 interest in Master Packaging to him?

10          DEPONENT: Uh-hum.

11          MR. REGIER: Did you say that that transfer  
12 occurred at or about the same time of the  
13 assignment that we have a record of here?

14          MR. MANRY: He's already testified that he  
15 doesn't know the exact date.

16          DEPONENT: I don't know the exact date.

17          MR. REGIER: Was that transfer -- I assume  
18 it was subsequent to this assignment, is that  
19 correct?

20          DEPONENT: You mean the transfer was after  
21 the assignment?

22          MR. REGIER: Yes.

23          MR. MANRY: Do you know?

24          DEPONENT: Well, I don't recall the dates  
25 at all, I'm very poor on dates.



1 MR. REGIER: According to the financial  
2 statements that we have received from -- this  
3 one is from the Flagship Bank dated May 30, 1974,  
4 the value of the Master Packaging equity that  
5 you owned on May 30, 1974, was six hundred  
6 thousand dollars.

7 DEPONENT: That was before the depression.

8 MR. REGIER: The depression occurred between  
9 May 30th and the assignment on June 30th, 1974?

10 DEPONENT: Ted, off the record --

11 MR. MANRY: No. What?

12 DEPONENT: The value of the company based  
13 upon its servicing the garment industry decreased  
14 radically. Do I make a statement like that or  
15 say nothing?

16 MR. MANRY: Well, answer the question.

17 Reread the question.

18 (Reporter read the question and answer.)

19 DEPONENT: Strike that word depression,  
20 that's a bad word. I don't think that's the word  
21 I meant to use at all.

22 MR. REGIER: What word will you use --

23 MR. MANRY: He hasn't answered your question.

24 MR. KOVNER: Well, the question is what  
25 occurred between May 30, 1974 and June 30, 1974

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1       tha would significantly effect your May 30  
2       evaluation of the stock.

3           DEPONENT: A decrease in the value of the  
4       stock of the company predicated upon the decrease  
5       and the almost utter rout in the garment industry  
6       in the United States.

7       Q     (By Mr. Kovner) And that occurred in the  
8       month of June, 1974?

9       A     The effects of it. I don't say one month,  
10      but the gradual effects and the loss of business  
11      decreased the value of the company substantially.

12      Q     Do you have any idea as to what proportion  
13      the decrease would have been?

14      A     No, but substantial.

15      Q     Substantial. Would it have been as much as  
16      a half?

17           MR. MANRY: Don't guess.

18      Q     I'm talking about in the month of June, 1974.

19      A     I cannot talk about the month of June, I'm  
20      giving a general statement that the business decreased  
21      radically in value.

22      Q     Decreased radically in value. Did it  
23      decrease in value during the month of June if you have  
24      any knowledge?

25      A     I have no knowledge of that.

1 Q So that to the best of your knowledge the  
2 value in June was -- at the end of June, 1974 -- was  
3 approximately, roughly in the neighborhood of what it  
4 was at the end of May, 1974?

5 A I couldn't answer that question because it's  
6 getting too involved for me. I can only make a  
7 statement that the business decreased radically.

8 Q In what period?

9 A Recently.

10 Q Recently?

11 A Correct.

12 Q What months are you referring to as recently?

13 A I'm not referring to any particular months.  
14 I'm making a statement that the value of the business  
15 has decreased radically predicated upon the general  
16 business conditions, with particular emphasis upon  
17 the garment industry that we were the main suppliers to.

18 Q But you have no knowledge as to the amount  
19 of that decrease that occurred in June, 1974?

20 A I have no knowledge.

21 Q So since you have no knowledge of the amount  
22 of the decrease in June would it be fair to say that  
23 the value of your equity at the end of May, 1974, was  
24 approximately what it was at the end of June, 1974?

25 A No, I can't say that. I can make no such

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1 statements as to value.

2 MR. MANRY: Mr. Annis, is Master Packaging  
3 traded at all?

4 DEPONENT: It's not traded.

5 MR. MANRY: So there's no market price  
6 established?

7 DEPONENT: There's no market price and  
8 there's no trading on the stock.

9 MR. REGIER: What was the amount of -- let  
10 me rephrase that -- the purpose of the assignment  
11 to your son was to compensate him for a debt that  
12 you had to him. What was the amount of that debt,  
13 if you'll refresh my memory?

14 DEPONENT: A hundred thousand dollars,  
15 approximately a hundred thousand dollars.

16 Q (By Mr. Kovner) I show you a paper from  
17 the Seminole Bank Exhibit 2, introduced just a few  
18 minutes ago in your presence, and ask you if you have  
19 ever seen that document?

20 A Yes.

21 MR. MANRY: Let me see it.

22 MR. KOVNER: (Handing document to Mr. Manry)

23 Q You have seen that document?

24 A Uh-hum.

25 Q What is it?



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1 A A joint statement of my wife and myself's  
2 assets.

3 Q In this handwriting in the upper left-hand  
4 corner your signature?

5 A Right.

6 Q Who prepared the document?

7 A I did.

8 Q Who typed it up?

9 A I don't know.

10 Q For what purpose was it prepared?

11 A Prepared in request, I assume, by the  
12 Seminole Bank.

13 Q Was it prepared as your financial statement  
14 or a financial statement of you and your wife as of  
15 May 30, 1974?

16 A It was prepared as an approximate financial  
17 value of holdings of my wife and myself without any  
18 audit and based upon approximations only.

19 Q Do you know when it was prepared?

20 A No. Whatever date it was there.

21 Q Well, it's a statement as of May 30. Was  
22 it prepared shortly after May 30?

23 A I have no knowledge of that, I have no  
24 recollection. It may have been prepared a considerable  
25 period of time before that, I don't know.

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1 Q Is it a usual practice for you to prepare a  
2 statement a considerable period of time before a date -

3 A A few months.

4 Q A few months before?

5 A Oh, yes. Sometimes and sometimes not. I  
6 wouldn't want to be held to that point one way of the  
7 other.

8 Q Is it more usual that statements are prepared  
9 shortly after the date requested?

10 A Not particularly.

11 Q Not particularly.

12 MR. REGIER: At the time that you made the  
13 assignment of the Master Packaging stock to your  
14 son was it your opinion that the value of the  
15 company, or the value of your equity in that  
16 company, was approximately equal to the debt that  
17 you owed your son?

18 DEPONENT: (Nodded affirmatively.) -- no,  
19 no, no, no. We're talking about two debts here.  
20 We're talking about a hundred thousand dollars.  
21 I'm talking about the actual cost of fifty  
22 thousand dollars of preferred stock was, in my  
23 judgment, what was the value.

24 MR. REGIER: The fifty thousand dollars was,  
25 in your judgment, the value of the stock at the

1 time you assigned it to your son for a fifty  
2 thousand dollar debt?

3 DEPONENT: Correct.

4 Q (By Mr. Kovner) Notwithstanding the fact  
5 that a statement one month previous thereto you had  
6 valued your equity at six hundred thousand dollars?

7 A The value, I have it done by a third party  
8 who works on a multiple of earnings projected, and I  
9 used his figures, not my own.

10 Q Who was the third party?

11 DEPONENT: Should I bring this up?

12 MR. MANRY: He asked you. Who was the third  
13 party?

14 A Huh, the value was predicated upon a  
15 statement by the Citizens of Southern Bank.

16 Q What was that statement, to the best of your  
17 recollection?

18 A That the number of shares upon conversion,  
19 the business was worth that much money based upon the  
20 dollar volume we were doing at that time after the "debt".

21 Q Do you remember when that statement was  
22 prepared?

23 A No, I don't.

24 Q Would you have a copy of that statement?

25 A No.

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1 Q You do not?

2 A I have no copy of it.

3 Q Do you know how it came into your possession?

4 A Verbally.

5 Q Verbally?

6 A Correct.

7 Q From whom?

8 A By one of the officers of the Citizens  
9 Southern Bank. I would have to guess which one it was.

10 MR. REGIER: Upon what did you base your  
11 subsequent evaluation of the value of the equity,  
12 of your equity, in Master Packaging at the time  
13 that you assigned it and had it transferred to  
14 your son?

15 MR. MANRY: The witness has already testified  
16 that he transferred it on the basis of his cost  
17 of the preferred shares, which was fifty thousand  
18 dollars.

19 DEPONENT: Correct.

20 Q (By Mr. Kovner) Was that the sole basis?

21 A Yes.

22 Q On your May 30, 1974 statement there is an  
23 item, "Accounts receivable, Master Packaging, Tampa,  
24 fifty-four thousand dollars."

25 A That's an error, that should have been fifty.



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1 Q That should have been fifty?

2 A That is the balance of the debt of the one  
3 hundred thousand that I transferred to my son.

4 Q That's the fifty thousand dollar loan?

5 A Uh-hum.

6 MR. REGIER: That doesn't make sense.

7 Q Did you get a note for that loan?

8 A Did I give a note?

9 Q Did you get a note since you made the loan?

10 A Yes.

11 Q You did get a note?

12 A Yes.

13 Q Did that note bear interest?

14 A No interest payable, not interest bearing  
15 until some other obligations -- not interest bearing --

16 MR. MANRY: Just -- he asked you before  
17 whether it bore interest. It does not bear  
18 interest, okay.

19 DEPONENT: Well, it doesn't --

20 MR. MANRY: Just answer his question.

21 Q It didn't bear interest at any time or did  
22 it provide for interest on some contingency?

23 A Some contingency.

24 Q What was that?

25 A A long involved formula which I do not have

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1 with me at the moment, but way in the future.

2 Q I see. But you do have a copy of that note?

3 A Yes.

4 MR. KOVNER: Is that note available today,  
5 Mr. Manry?

6 MR. MANRY: I don't know, I do not have it.

7 MR. KOVNER: You do not have it. If a copy  
8 is available today it would save us time and we  
9 would appreciate it.

10 MR. MANRY: I am not going to produce except  
11 what is called to be produced. And we will not,  
12 as far as I'm concerned, produce records in the  
13 future. Because we've had two depositions and  
14 it's very tiring on Mr. Annis, and I believe this  
15 to be just a general fishing expedition in the  
16 first instance and I do not think that we will  
17 cooperate from here on, let's say, in any further  
18 depositions. We'll let the court order, if they  
19 so choose. But --

20 DEPONENT: Thank you, Ted.

21 MR. MANRY: I think it's getting on the verge  
22 of harassment after this deposition.

23 DEPONENT: I appreciate your position, but,  
24 gentlemen, let me tell you something. It's only  
25 because you are a gentleman and you are a

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1 gentleman that I'm doing it. And I'm doing my  
2 best to cooperate as best I can. I, under  
3 ordinary circumstances, asked for at least an  
4 extra month, as you know. My physical condition  
5 is such that it is extremely difficult for me to  
6 sit in long, arduous meetings. And I can give  
7 you medical records, if you so desire.

8 I am delighted to tell you anything I can  
9 as long as we can, please, as a personal thing,  
10 try to hit matters as rapidly as possible because  
11 I am -- I don't want to --

12 MR. KOVNER: Do you want to go off the  
13 record and discuss this matter, Mr. Manry?

14 MR. MANRY: Yeah, it's fine with me.

15 (Discussion off the record.)

16 (Reporter read the question and answer)

17 MR. KOVNER: Mr. Annis, I am, on this record,  
18 providing you with a notice to produce hereby -  
19 giving you a notice to produce that note and all  
20 records in connection with the loan you made to  
21 Master Packaging. The return date of that notice  
22 will be provided to your Counsel subsequently.  
23 And I regret that if it's available today it  
24 won't be produced, because, obviously, that is  
25 what we're seeking. It's true it was not

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1 specifically requested, but if it is available  
2 we ask for your cooperation; if it's not available --

3 DEPONENT: Okay.

4 Q (By Mr. Kovner) What was the contingency,  
5 to the best of your recollection, under that note under  
6 which interest would be paid?

7 A After the payment of previous bank debts.

8 Q I see.

9 MR. KOVNER: (To Mr. Regier) Do you have  
10 anything else?

11 MR. REGIER: Not on that.

12 MR. KOVNER: Mr. Manry?

13 MR. MARRY: No. I'll state for the record  
14 that I, of course, will not recognize an oral  
15 notice to produce under any circumstances.

16 Where are we, "C"? "Records regarding  
17 termination of his five-year contract with  
18 General Cigar which was renewed in 1969 and  
19 converted into a twenty-five thousand dollar a  
20 year consulting agreement in 1972." I believe  
21 that the date was actually June of '71, according  
22 to the records, rather than '72. Here's a copy  
23 of the contracts and the letter contract that  
24 converted and terminated.

25 MR. KOVNER: This would be Composite Exhibit



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1 10.

2 (Plaintiff's Composite Exhibit 10 was marked  
3 for Identification.)

4 (Interruption in proceedings, Mr. Manry  
5 exited and returned to the deposition room.)

6 DEPONENT: There may conceivably be duplicates  
7 in there. There may be one duplicate.

8 MR. KOVNER: I'm not going to ask any  
9 questions of the witness on Plaintiff's 10 at  
10 this time because of the volume of the documents  
11 and the time it will take to review them.

12 MR. MANRY: Okay. We will not, of course,  
13 be able to produce records for the Annis  
14 Foundation.

15 MR. KOVNER: Do you want to note for the  
16 record the basis of that objection?

17 MR. MANRY: The basis of that objection is  
18 he does not have custody or control over them,  
19 he's not the sole trustee of that Foundation.

20 MR. KOVNER: I see.

21 MR. MANRY: He has none under "E." I think  
22 you've gotten these by other means, in any event.  
23 He had none in his possession other than what  
24 you have already gotten from your depositions  
25 of the various banks.

1 MR. KOVNER: We don't have "E little 2."

2 MR. MANRY: Citizens of Southern Bank?

3 MR. KOVNER: He doesn't have any?

4 MR. MANRY: Right, he does not have any in  
5 his possession. I'm not saying he did not give  
6 it to the Citizens.

7 MR. KOVNER: Okay.

8 MR. MANRY: These records, he does not have  
9 records as such with respect to variable funds,  
10 he just doesn't have any records.

11 MR. KOVNER: Just on "F," is the only bank  
12 through which you purchased variable funds the  
13 Exchange Bank?

14 DEPONENT: Yes.

15 MR. KOVNER: You didn't buy any through  
16 First National?

17 DEPONENT: If so it would have had to be an  
18 awful long time ago.

19 MR. KOVNER: Since 1971?

20 DEPONENT: A long time ago.

21 MR. KOVNER: You didn't buy any since 1971?

22 DEPONENT: I wouldn't think so.

23 MR. MANRY: The six Renoirs, the only  
24 available record would be the tax returns that  
25 were already produced. We haven't been able to

1           locate any records other than that.

2           DEPONENT: I have been unable to locate them.

3           MR. MANRY: If we do locate some -- we're  
4           still looking -- if we do have them we will  
5           produce them. But as of this time we haven't  
6           located them.

7           Q        (By Mr. Kovner) Were there written contracts  
8           of sale for those paintings?

9           A        I don't believe so.

10          Q        So the records that existed were basically  
11         their checks and your deposit slips and nothing else?

12         A        Well, my tax returns.

13         Q        And your tax returns which you have produced.

14         A        The art world -- when you deal these days  
15         it's very non-official.

16         Q        Do you recall the other name of the agent or any  
17         of the other names other than the one you gave us last  
18         time of the agent who owned and sold these paintings?

19         A        Zessman is the name I gave you, he's out of  
20         business.

21         Q        Yes, sir.

22         A        The other is a man, whom I cannot locate,  
23         from New York by the name of Mazo.

24         Q        Do you recall how to spell that?

25         A        I think it's M-a-z-o. I've tried to locate

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1 him, in fact, for other reasons and I have been unable  
2 to find him. However, he does spend a great deal of  
3 time out of the country.

4 Q Do you remember his first name?

5 A No, I don't. The transactions were some time  
6 ago.

7 MR. KOVNER: Ted, I think you have something  
8 to say about "H."

9 MR. MANRY: "H, records of Gardenia." The  
10 only thing that he has other than what has already  
11 been produced is this letter. Now, we produced  
12 some stuff in the last deposition. I believe it  
13 was --

14 MR. KOVNER: A Florida return of some kind.

15 MR. MANRY: That's right. That has already  
16 been produced. And then this letter. Those are  
17 the only records that he has in his custody about  
18 Gardenia that he's been able to locate. Again,  
19 on this, if we do locate other records, we'll  
20 produce them without further notice. However,  
21 as he testified before, this Gardenia Corporation  
22 is defunct, let us say, for all purposes.

23 (Plaintiff's Exhibit Number 11 was marked  
24 for Identification.)

25 Q (By Mr. Kovner) Mr. Annis, did Mr. Litschgi



1 represent you in connection with the land that was  
2 acquired by Gardenia?

3 A I believe so.

4 MR. MANRY: By producing that letter we do  
5 not, of course, intend to waive any attorney-  
6 client privilege. That is simply -- I don't  
7 think that that is a privileged communication,  
8 however.

9 A My partner, who was doing work with him,  
10 may have been instrumental in securing him. I don't  
11 recall Mr. Litschgi because most of my work was done  
12 with -- (Indicating Mr. Manry)

13 Q That is your partner, being Mr. Zambito?

14 A Zambito.

15 Q Would the records be either with Mr. Zambito  
16 or with Mr. Litschgi? Is that possible? If you  
17 know.

18 MR. MANRY: Do you know?

19 A I would say that it would be extremely  
20 difficult to find anything from Mr. Zambito.

21 MR. MANRY: Would he be the logical one to  
22 have that record?

23 DEPONENT: Ted, off the record --

24 MR. MANRY: No.

25 DEPONENT: He has not even given me the God

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1       damn '73 returns yet, or anything we've done.  
2       He's so far behind the Internal Revenue Service  
3       is after him for records. So I can't say he'll  
4       give us anything.

5               MR. MANRY: I think that explains what  
6       Counsel needs to know, there may not be --

7               DEPONENT: I never met a man in my life like  
8       that.

9               MR. MANRY: There's nothing in our powers  
10       that would require Mr. Zambito to do anything.

11               DEPONENT: Mr. Zambito at one time owned  
12       about eight horses and they didn't have any kind  
13       of records on them, so he's not the most reliable  
14       record keeper in the world and I have evidence to  
15       prove that.

16               MR. MANRY: I'll say to Counsel probably Mr.  
17       Zambito would be the only source of what records  
18       are available.

19               DEPONENT: Yes, that you can say in spades,  
20       he's the only source.

21               MR. MANRY: We don't make any assertions as  
22       to Mr. Zambito's records.

23               DEPONENT: Or his ability or desire -- his  
24       ability to produce them.

25               MR. REGIER: Is your position still that your

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1 interest in Gardenia is --

2 DEPONENT: It's none. Mr. Zambito is owed  
3 money, taxes are owed, that's it.

4 MR. MANRY: It's a liability corporation.

5 DEPONENT: It's a liability corporation.

6 MR. REGIER: No value in it at all?

7 DEPONENT: No. I have no value in it of any  
8 kind.

9 MR. KOVNER: What about "I"?

10 MR. MANRY: On the acquisition of the interest  
11 of Florida Downs Corporation there's his stock  
12 certificate, and we lumped "I" and "J" together  
13 since they concern basically some of the same  
14 things. There is a note, loan, from his brother,  
15 Dr. Annis.

16 MR. KOVNER: Let's produce these two. Why  
17 don't we staple them?

18 MR. MANRY: I think "I" and "J" basically go  
19 together, if we are following the testimony given  
20 in the last deposition.

21 MR. KOVNER: All right. Let's staple them  
22 together and mark those as our next Exhibit.

23 (Plaintiff's Exhibit Number 12 was marked  
24 for Identification.)

25 MR. MANRY: Let us jump to "M" in connection

1 with your 12. You have already taken the  
2 deposition of the Exchange National Bank wherein  
3 the consolidation loan was testified to. You  
4 have a copy, I believe, of that note from them?

5 MR. KOVNER: Yes.

6 MR. MANRY: So the copy of the original --  
7 what we have in our possession on "M," which also  
8 relates generally to Florida Downs stock, is a  
9 letter, which you may already have, dated July  
10 27th, 1972, with respect to consolidation and  
11 the Florida Downs note of eighty-four thousand  
12 dollars.

13 MR. KOVNER: We don't have that letter.

14 MR. MANRY: You don't? This will be "M."  
15 I would suggest that it might be easier to just  
16 make it part of 12, and here's the letter. This  
17 is solely -- other than what you have gotten from  
18 the bank already -- that is what is left from  
19 our records. Between that and the bank's you've  
20 got pretty much the records on that.

21 Let's just finish up on the others while  
22 we're at it, if we can, and you can go back if  
23 you want to. "K, records of the obligations  
24 incurred to his daughter in 1973 in the amount  
25 of approximately fifty thousand dollars."



1           The obligation to his daughter and those  
2 records were produced at the last time. There's  
3 nothing additional.

4           "Records of gifts to his family --"

5           MR. KOVNER: Just let me stop you -- (To  
6 Mr. Annis) there are no checks, deposit slips,  
7 withdrawal statements of any kind other than the  
8 letter that you produced last time with respect  
9 to the --

10          DEPONENT: There is a note, isn't there?

11          MR. MANRY: A note and letter.

12          MR. KOVNER: That's the totality of the  
13 records? There are no bank records of any kind  
14 in connection with that?

15          MR. MANRY: That you know of at this point.

16          DEPONENT: You mean of the repayment?

17          MR. KOVNER: The fact of the initial --

18          MR. MANRY: Transaction --

19          MR. KOVNER: -- transaction?

20          MR. MANRY: I think what you've got is what  
21 you've got under "K."

22          MR. KOVNER: That's all you have?

23          MR. MANRY: On that. Previously --

24          DEPONENT: I thought we covered that  
25 previously.

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1 MR. MANRY: Yeah, previously. Is there  
2 anything else as to incurring of this obligation  
3 to your daughter in the amount of fifty thousand  
4 dollars? You produced the note the last time  
5 and the letter. Is there anything else, any  
6 other evidence, any other note?

7 DEPONENT: There are no further notes.

8 MR. MANRY: Any other correspondence to her  
9 concerning it at the time it was incurred?

10 DEPONENT: Yes.

11 MR. KOVNER: Was there some evidence that  
12 the fifty thousand dollars indeed came from her  
13 trust to you?

14 DEPONENT: Oh, yes.

15 MR. KOVNER: That's what I'm looking for.

16 DEPONENT: You mean that the money was taken  
17 from her trust?

18 MR. KOVNER: Yes.

19 DEPONENT: Oh, yes, definitely, certainly.

20 MR. KOVNER: That's the evidence that I'm  
21 looking for beyond the note itself.

22 DEPONENT: Ted, may I ask a question?

23 MR. MANRY: Yeah.

24 DEPONENT: What I don't quite understand is  
25 are you looking for authenticity that this money

1 was taken?

2 MR. MANRY: Yes, right.

3 DEPONENT: Well, that's essentially available  
4 but I have never heard anyone say to me, "Morton,  
5 show us when the money was taken, by whom and how."  
6 Okay. That is certainly available and if anyone  
7 ever asked me that -- it's available.

8 MR. MANRY: Can you get the records for us?

9 DEPONENT: Certainly. If you'll give me a  
10 written -- as you say, orally -- if you'll give  
11 me a written request I'll give you exactly --

12 MR. MANRY: Well, we'll take that orally.  
13 We took that to mean the note and the --

14 MR. KOVNER: Okay. What I'm looking for --  
15 and I gather from your statement that you have no  
16 problem with it -- is the evidence that the loans  
17 to your children were in fact made, that monies  
18 went out of the trusts --

19 DEPONENT: Exactly, that is completely  
20 available, and --

21 MR. KOVNER: -- as trust to you.

22 DEPONENT: If you had ever asked me for it --  
23 I have also letters and documents pertaining to  
24 that. But never at any time was I asked for it.

25 MR. MANRY: We'll collect those and give them

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1 to you.

2 MR. KOVNER: Okay.

3 MR. MANRY: "Gifts to his family members  
4 since 1971." He's already testified there are  
5 no records. These gifts were within the six  
6 thousand dollar exclusion and he kept no records  
7 of it so there are no records available. His  
8 prior testimony was to the effect that these were  
9 really incidental since '71, not amounting to  
10 anything of a substantial value since 1971.

11 MR. KOVNER: I think his prior testimony  
12 was that they might be in the aggregate as high  
13 as seventy thousand dollars.

14 DEPONENT: That was -- yes, that was --

15 MR. MANRY: Are you talking about in the  
16 period of '71 to the present time?

17 MR. KOVNER: Yes.

18 DEPONENT: That is -- they were not as high  
19 as that. That was predicated upon something that  
20 just did not happen and commitments made which  
21 were not lived up to. I must --

22 MR. KOVNER: And to the best of your  
23 recollection from the beginning of 1971 to the  
24 present how much was given to your children?

25 DEPONENT: Very little, a few thousand bucks



1 each one.

2 MR. KOVNER: Under ten thousand dollars each?

3 DEPOSENT: Oh, certainly.

4 MR. MANRY: Again, we've already covered  
5 this.

6 Q (By Mr. Kovner) Now, we have not previously  
7 seen this letter in connection with the Florida Downs  
8 note which you guaranteed, so I'm going to ask you --  
9 all we did see was the note for eighty-three or  
10 eighty-four --

11 MR. MANRY: I have not gone through the  
12 Exhibits yet.

13 Q Could you trace for me, to the best of your  
14 recollection, Mr. Annis, the circumstances under which  
15 you and your brother guaranteed a note for Florida  
16 Downs and then got out of it?

17 A Yes, I will do the best I can. And I  
18 remember quite vividly. Unfortunately I happen to  
19 recall the date, it happened on the morning of Rosh  
20 Hashonah. I just returned from Europe and my brother  
21 called me and said the grandstand burned down, the  
22 whole grandstand burned down. And that must have been  
23 '66, '65, '64. (kay? Complete and utter demolition.  
24 Rosh Hashonah normally comes, I believe, in the fall.  
25 I don't know when it did come. So it became necessary

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1 for us to get some money together to rebuild it.  
2 Mr. Chester Ferguson, who is one of the senior  
3 partners of this firm, came to me and asked me if I  
4 would guarantee along with my brother to the Exchange  
5 National Bank -- at that time Mr. Ferguson was  
6 Counsel, I think, for the bank -- this amount of some  
7 hundred and -- a hundred and sixty-six thousand  
8 dollars.

9 MR. MANRY: Basically the answer to his  
10 question was that this was a loan guarantee  
11 made for replacement of capital loss at the bank.

12 DEPONENT: To get start-up money to rebuild  
13 it before the insurance money came through.

14 Q A total of a hundred and sixty-six thousand?

15 A A hundred and sixty-six -- approximately a  
16 hundred sixty-six, I think, yeah, between my brother  
17 and myself.

18 Q Did other people also guarantee loans or  
19 was it just the two of you?

20 A Oh, I imagine other people too.

21 Q You don't know the total amount of the  
22 damage?

23 A No, no. I know the note total. It cost a  
24 million dollars to rebuild it.

25 Q I see. Did the insurance proceeds ever

1 reimburse part of the loan?

2 A No.

3 Q So the loan remained outstanding?

4 A Correct. The insurance proceeds fell far  
5 short even with loss of occupancy to cover the building.

6 Q To the extent they provided any compensation,  
7 didn't the guarantors of the notes show equally in the  
8 insurance proceeds?

9 A No, no. That's a great idea, wish I'd known  
10 about it.

11 MR. MANRY: I know what Counsel is driving at --

12 DEPONENT: No one got anything, zero.

13 MR. MANRY: Just a second. Was the obligation  
14 that you incurred as a guarantor over and above  
15 the cost -- part of the cost over and above that  
16 which was reimbursed by insurance with respect to  
17 the rebuilding of these grandstands?

18 DEPONENT: I mean, are you inferring that I  
19 got money back from the insurance?

20 MR. MANRY: No, no, Mort, now, listen --

21 MR. KOVNER: That your note was reduced.

22 DEPONENT: No, the note was never reduced,  
23 never got anything from it.

24 MR. MANRY: There was no reduction from  
25 insurance?

1           DEPONENT: God, no, of course not.

2           MR. MANRY: Okay. There was a casualty loss  
3 far in excess of what was compensated for in  
4 insurance?

5           DEPONENT: About a million dollars. I had  
6 nothing to do with it.

7           Q     (By Mr. Kovner) Okay. And other shareholders  
8 also guaranteed notes?

9           A     I cannot state that. Some other shareholders  
10 are dead, I cannot state that. Mr. Wellman is dead,  
11 Mr. Woods is dead. I don't know.

12          Q     But you know at least some of the shareholders  
13 -- this one hundred sixty-six thousand was not the  
14 total amount.

15          A     That was, to the best of my recollection,  
16 was start-up money for rebuilding.

17          Q     And only two of you put it up?

18          A     No, I cannot say that. I'm sure other people  
19 participated but I have no privy to it.

20          Q     But you don't know who. And that loan  
21 remained an obligation of Florida Downs and guarantees  
22 were made to be in effect until 1972, is that correct?

23          A     If that's what the letter says.

24          Q     And what happened in 1972, to the best of  
25 your recollection?



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1 A Well, there was a reorganization and  
2 everyone took on their own responsibility of the money.

3 Q And with respect to your eighty-four  
4 thousand dollar guarantee, what happened to that?

5 A What happened to it? I had to come up with  
6 the eighty-four thousand dollars in securities.

7 Q I thought that you borrowed the money from  
8 the Exchange Bank.

9 A Yeah, but it had to be secured.

10 Q And you had to secure that?

11 A That's right.

12 Q And your brother did the same?

13 A Yes, eventually, yes.

14 MR. MANRY: Was this -- Morton, this was a  
15 reorganization of Florida Downs whereby the  
16 stockholders who had previously guaranteed these  
17 loans took the liability personally --

18 DEPONENT: Exactly.

19 MR. MANRY: -- away from the corporation--

20 DEPONENT: Exactly.

21 MR. MANRY:--and assumed personal, primary  
22 obligations on the notes.

23 Q Did you write off your eighty-four thousand  
24 dollar loss there in that succeeding year?

25 A Oh, did I write it off? No, no, huh-uh.

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1 Q Well, as I understand it you had guaranteed  
2 an obligation of Florida Downs and then in '72 you  
3 assumed it as a primary obligation and Florida Downs  
4 was let off. So that you became personally -- you  
5 became primarily liable on an eighty-four thousand  
6 dollar obligation, right? Did you receive any  
7 consideration for that by way of stock, or anything  
8 else, from Florida Downs?

9 A In order for me to answer that I've got to  
10 go back into the financials of this thing, which is a  
11 long, involved thing.

12 MR. MANRY: No. Did you receive --

13 DEPONENT: I don't recall. It was a very  
14 involved financial situation having to do with  
15 other people too.

16 MR. MANRY: Don't -- just answer the question.  
17 If you don't know what --

18 DEPONENT: I cannot at this moment without  
19 deep consultation find out exactly what happened  
20 about that obligation on the rebuilding of the  
21 grandstand because there was a complete reevaluation  
22 of the entire corporation.

23 Q So your equity in it was at least restructured  
24 or changed in some way?

25 A To some extent, but no greater than I have on

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1 the stock given to my brother.

2 Q Who represented Florida Downs?

3 A (Indicating table.)

4 Q This firm? The stock certificate of two  
5 hundred forty-eight thousand nine hundred and fifty-  
6 three shares of Florida Downs and Turf Club I think  
7 is dated February 8th, 1973.

8 A Uh-huh.

9 Q Why do you have a 1973 certificate when you  
10 originally acquired an interest back in the early '66's,  
11 I think you testified?

12 A Well, first of all, that stock was a long  
13 time being issued, number one. And the secretary of  
14 the senior partner member of this firm was in charge  
15 of that, and I'm not going to ask her why she took so  
16 long to issue the stock. That's number one. Okay.  
17 We had originally sold stock. We originally decided  
18 to sell stock to a certain company and take a loss,  
19 which we did. And certain money was due us, which  
20 incidentally is on that figure, but we never got it;  
21 write-off. It's very difficult to answer these  
22 questions without getting involved in tremendous  
23 research of the reorganization of Florida Downs, and  
24 so forth, and I can't do it now.

25 Q Okay. I don't want to ask for that full at



1 this point.

2 A It would take an hour to even explain what  
3 happened.

4 Q Was there a newly formed corporation in '72  
5 or '73 or was this the same corporation in which you  
6 always held shares?

7 A No, I think that was -- was that the Downs  
8 and Turf Club?

9 Q The Downs and Turf Club.

10 A I think that's the new one. I believe that's  
11 the new one. I think the old one was Florida Downs.  
12 But that's all the stock there is.

13 Q And this replaced whatever shares you held  
14 in Florida Downs earlier?

15 A That's the works, the complete thing, all  
16 predicated to my brother based upon loans of financing  
17 by my brother.

18 Q Is this note to your brother the sole  
19 written evidence of that loan that you have? There  
20 is no correspondence or checks in connection therewith?

21 A No.

22 Q Did he issue a check of two hundred and  
23 nineteen thousand dollars to Florida Downs at that  
24 time?

25 A No, no. To the bank to take the loan out.

1 There was an additional -- which I have already  
2 testified -- three thousand shares of General Cigar  
3 Company stock holding on that transaction.

4 Q I believe that three thousand shares of it  
5 secures the bank loan that was taken out.

6 A Part of it, yes, that was part of it.

7 Q That's the three thousand shares you're  
8 talking about?

9 A That's correct, yeah.

10 Q Do you know who prepared this note?

11 A May I see it? Yes, the same secretary of  
12 the senior partner of this firm.

13 Q In this firm?

14 A Right.

15 Q Your brother lives in Baltimore?

16 A My brother lives in Tampa, Florida.

17 Q Where did I get -- Tampa?

18 MR. REGIER: I didn't think he was in town.

19 DEPONENT: My brother? There are three Dr.  
20 Annis', one in Lakeland, one in Tampa and one  
21 in Miami.

22 MR. KOVNER: I picked that up last time.  
23 I don't know where I got it.

24 MR. MANRY: His son was in Boston.

25 MR. KOVNER: Off the record.

1 (Discussion off the record.)

2 MR. REGIER: There was a financial statement  
3 that was filed by you with, I believe, three of  
4 your banks; one, Flagship for sure, the Seminole  
5 Bank and I believe the First National also.

6 DEPONENT: Right.

7 MR. REGIER: It's the May 30th, 1974  
8 financial statement of M. L. Annis.

9 Earlier in your testimony today you actually  
10 -- I guess it was during the time we were off the  
11 record -- you made quite a point of the fact that  
12 this was a joint statement.

13 DEPONENT: That's correct.

14 MR. REGIER: But it was not labeled as such.

15 DEPONENT: Never had a label on it as such.

16 MR. REGIER: If that were true could we take  
17 this step-by-step --

18 DEPONENT: Certainly.

19 MR. REGIER: -- and break it down and see  
20 what form the different numbers actually take.  
21 For instance, cash in the bank.

22 DEPONENT: If it's all right with Counsel,  
23 it's all right with me.

24 MR. MANRY: Go ahead.

25 DEPONENT: I can't give you cash, that's one

1           thing I can't give you.

2           MR. REGIER: You don't know what accounts  
3           would have made up that balance?

4           DEPONENT: I don't know what my position was  
5           at that particular time. That was a year --  
6           March, a year ago. I don't know.

7           MR. REGIER: What portion of this --

8           DEPONENT: I'll pass on that question, that  
9           I cannot answer. I can answer the rest.

10          MR. KOVNER: Can you answer in what banks  
11          you have had checking and savings accounts?

12          MR. MANRY: I think you've already got that  
13          through the bank records.

14          DEPONENT: You've already got that through  
15          the bank records.

16          MR. KOVNER: Is it just First National,  
17          Exchange Bank of Tampa, Seminole --

18          MR. REGIER: CNS.

19          DEPONENT: There's no CNS of Atlanta any  
20          more.

21          MR. KOVNER: -- and Marine.

22          MR. REGIER: Marine or Flagship.

23          DEPONENT: There's nothing in Flagship, to  
24          my knowledge -- oh, at that time?

25          MR. KOVNER: At that time.

1  
2 DEPONENT: Oh, I don't remember.

3 Q (By Mr. Kovner) Were there at that time  
4 checking or savings accounts by either you or your  
5 wife jointly in any other banks?

6 A I can't speak for my wife.

7 Q Well, at least to the joint.

8 A I could say there were checking accounts.

9 Q In other banks?

10 A I believe so, yeah.

11 Q What other banks?

12 A No checking accounts in those banks.

13 Q In any other banks I'm asking.

14 A Well, my wife has -- my wife has checking  
15 accounts in other banks. I don't know where they are.  
16 They're not joint, and she travels extensively.

17 Q Do you have checking accounts in other banks?

18 A Other than that, not to my knowledge.

19 Q Were there joint accounts in other banks?

20 A Not to my knowledge, not to my recollection.

21 Q Were there savings accounts by you or joint  
22 in other banks?

23 A No, no.

24 Q Were there savings accounts of your wife in  
25 other banks?

A I have no knowledge of that.



1 MR. REGIER: Could you, upon investigation,  
2 determine approximately what would have made up  
3 this cash balance? And you have it labeled  
4 "Cash in bank." You have said that this is a  
5 joint financial statement.

6 DEPONENT: I think "Cash in bank" may be a  
7 misnomer. There may be variable funds, and things  
8 such as that, negotiable -- not stocks or bonds  
9 but items such CD's she has, and things like that.  
10 I just -- I can't recall what happened in '74.  
11 Frankly, I know the amount as I put down was  
12 based on information, information furnished to me.

13 MR. REGIER: Could you, upon investigation,  
14 determine what portion of this three sixty-four  
15 thousand was attributable to your wife --

16 MR. KOVNER: Alone.

17 MR. REGIER: -- alone, that which was  
18 attributable to you and your wife jointly, and  
19 that which was attributable to you individually?

20 DEPONENT: Can I?

21 MR. MANRY: It's a matter of whether you can  
22 or not.

23 DEPONENT: I can try, I don't know. My wife  
24 is a very secretive woman about her position. I  
25 probably asked her at this stage of the game

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1 give Counsel in writing certain other documents in  
2 writing which I myself --

3 MR. MANRY: Don't, he'll ask for what he  
4 wants.

5 DEPONENT: Okay. Well, then, you find out  
6 from him what you want and I'll do the best I can  
7 to comply.

8 Q (By Mr. Kovner) I want to know if there is  
9 an assignment of the note you had?

10 A Yes.

11 MR. KOVNER: We don't have that yet.

12 MR. MANRY: There's no assignment of the  
13 note. You never assigned that note, Morton.

14 DEPONENT: Yes, I did.

15 MR. MANRY: To whom?

16 DEPONENT: To Morty.

17 MR. MANRY: You didn't assign the note to  
18 Morty, you gave him a note.

19 DEPONENT: Oh, I beg your pardon. I gave him  
20 -- the note is his. I'm getting involved in  
21 legal gobbledygook. The money is his. Now,  
22 whether it's --

23 MR. MANRY: You gave him a note for the loan  
24 and that's it.

25 DEPONENT: I've got -- I'll have to review

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1 this with you at some future time. I don't  
2 recall giving him a note or assigning a note,  
3 or what the hell the document is.

4 MR. REGIER: Well, then, let me ask this  
5 question. What became of the note that you had  
6 labeled "Accounts receivable, Master Packaging,  
7 Tampa," owes you fifty thousand dollars.

8 DEPONENT: That is the one that now my son  
9 has.

10 MR. REGIER: So that money is now owed by  
11 Master Packaging to your son?

12 DEPONENT: It is my son's property, correct.

13 MR. REGIER: Okay. And that, once again,  
14 was in payment of a debt that you had to him in  
15 the amount of --

16 DEPONENT: A hundred thousand dollars.

17 MR. REGIER: Okay.

18 DEPONENT: Incidentally, I said a hundred  
19 thousand. It may be ninety-eight, ninety-nine.  
20 I rounded it out to a hundred.

21 MR. KOVNER: I understand. The letter said  
22 ninety-eight. I assumed you were saying  
23 approximately.

24 MR. REGIER: The other fifty thousand was  
25 in stock of Master Packaging?

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1 DEPONENT: Correct.

2 MR. REGIER: Brighton Engineering, Frankfort,  
3 Kentucky owed you seventy-four thousand dollars  
4 in 1974. Do they still owe you seventy-four  
5 thousand?

6 DEPONENT: That is going to have to be  
7 written off. It was never paid. That was  
8 predicated upon an earlier sale of stock of the  
9 original Florida Downs Corporation, which has  
10 never been paid.

11 MR. REGIER: You sold the stock to them?

12 DEPONENT: Uh-huh.

13 MR. REGIER: And they never paid you for the  
14 stock?

15 DEPONENT: That's correct.

16 Q (By Mr. Kovner) Who is "they"?

17 A Brighton Engineering.

18 Q Is that a corporation or a partnership.

19 A I have no idea.

20 Q Who are the principals?

21 A There are a group of principals, among them  
22 a Mr. Noe, N-o-e, and Mr. May, M-a-y -- two Mr. Mays,  
23 and a great many other people.

24 Q To whom did you make the deal to sell the  
25 Florida Downs stock or some of the Florida Downs stock

1 for seventy-four thousand dollars? Which one of these  
2 people at Brighton Engineering?

3 A I think it was made directly to the company,  
4 I don't think it was made to any individual.

5 Q That is a corporation, you say?

6 A I didn't say that. It may have been a  
7 partnership.

8 Q Which individual did you speak with at the  
9 company that you had the negotiations that led to that  
10 agreement?

11 A A group of people discussed it, I cannot  
12 recall which one.

13 Q All right, give me the names of the people  
14 you do recall.

15 A There was a Mr. Noe.

16 Q Do you have his first name?

17 A I think it's Ike.

18 Q Yes.

19 A A Mr. James -- I cannot at this time give  
20 you the names of all the individuals involved. There  
21 are three or four men in that company and I don't  
22 recall who was in the conversation or who was involved  
23 in the transaction and I'm not going to guess or  
24 speculate.

25 Q When was that deal made?



1 A A long time ago.

2 Q Do you have a rough estimate of the year  
3 involved? Was it between 1965 --

4 A Mid '60's.

5 Q Mid '60's. Was there a writing?

6 A Pardon me?

7 Q Was there a writing reflecting the deal?

8 A A note?

9 Q Some agreement, some written document.

10 A Probably, but not one in my possession, to  
11 my knowledge at this moment.

12 Q Did you ever request payment on it?

13 A No.

14 Q Is the company still in business?

15 A I don't know.

16 Q Who represented you in that deal, or were  
17 you represented in that deal, to sell it to Brighton  
18 Engineering?

19 A Represented by whom?

20 Q By Counsel or by anybody.

21 A I don't recall.

22 Q Have you spoken or written to Mr. Noe or Mr.  
23 May recently?

24 A No.

25 Q But in May 30, 1974, you considered that

1 obligation collectable?

2 A I did.

3 Q How much Florida Downs stock were they to  
4 buy for seventy-four thousand?

5 A The actual number of shares?

6 Q Approximately, if you recall.

7 A I don't recall.

8 Q Do you know how much of your interest in  
9 Florida Downs that they would have purchased?

10 A All of it.

11 Q They would have purchased all of your equity  
12 and interest in Florida Downs for seventy-four thousand?

13 A Well, maybe that's not a correct statement.  
14 Let me -- I shouldn't say that because that may not  
15 be right. They purchased certain shares of stock for  
16 that amount.

17 Q Certain shares?

18 A This was prior to the reorganization.

19 Q You list in this statement that seventy-four  
20 thousand dollars --

21 A Yes.

22 Q -- plus three other items of Florida Downs --

23 A Yes.

24 Q -- one, ten thousand dollars, one at  
25 sixty-three thousand and one at three twenty.

1 A Yes, yes.

2 Q Do you want to explain?

3 A I'd be delighted to. Florida Downs' ten  
4 thousand dollars that was owed to me they refused to  
5 pay.

6 Q When was that owing -- from?

7 A It was owing from the transaction where they  
8 were building more stalls and they needed money to --  
9 they needed money to get the stalls started. And I  
10 advanced them money and the stalls were sold to a  
11 certain Kentucky interest in this and they came up ten  
12 thousand dollars short and they insisted that as I had  
13 started the plan that I should stand the loss. I kept  
14 it as a ten thousand dollar loan and I just recently  
15 got a letter from my accountant who told me that they  
16 could not, in due conscience, pay me the money, that  
17 was my contribution.

18 Q Their accountant or your accountant, or vice  
19 versa?

20 A They're the same accountant.

21 Q I see. Do you have a note for that ten  
22 thousand dollars?

23 A (Nodded negatively.)

24 Q Is it your intention to write off that ten  
25 thousand dollar note as a bad debt?

1 A My intention is to try to get it someday.

2 Q Have you taken any action to try to get it?

3 A Yeah.

4 Q Namely --

5 A ly asking.

6 Q Asking in writing?

7 A No, verbally.

8 Q To whom have you asked?

9 A The senior partner of this firm.

10 Q Is he a principal of Florida Downs?

11 A Yes.

12 Q And his name is --

13 A Chester Ferguson.

14 Q The other listings of Florida Downs in this  
15 statement.

16 A The sixty-three thousand dollars you've  
17 referred to?

18 MR. REGIER: Yes.

19 A I'd be delighted to tell you about that  
20 which is a matter of some very great concern to me.

21 MR. MANRY: Just tell him.

22 A It just burns my tail. This was stock that  
23 was due me based upon a -- what I regarded as a  
24 commitment by the company to pay me X amount of stock  
25 over a period of time, over some -- let's see, over

1 three years -- I think it's over three years. They  
2 have refused to honor the obligation.

3 MR. REGIER: For what purpose were they to  
4 give you that stock, or pay it to you, or why did  
5 they owe you that stock?

6 DEPONENT: For certain activities that were  
7 carried on of various natures.

8 MR. REGIER: Activities that you carried on?

9 DEPONENT: That is correct, sir.

10 MR. REGIER: For instance --

11 DEPONENT: For instance the taking over of  
12 certain debts of the corporation.

13 MR. REGIER: You took over debts of the  
14 corporation with the idea of doing it in exchange  
15 for some additional stock in the company?

16 DEPONENT: It was always inferred to me that  
17 that was what was going to happen. But the powers  
18 that be decided that that wasn't what they wanted  
19 to do. And being I voted -- and, by the way, I  
20 just received notice of this last week -- I would  
21 say that they recorded this as being invalid,  
22 this claim.

23 Q (By Mr. Kovner) Is there any writing  
24 reflecting that?

25 A Yes.



1 Q What writings do you know about that deal  
2 with this subject?

3 A A letter.

4 Q That's the letter rejecting the fund?

5 A That is correct.

6 Q From whom was that letter sent?

7 A Mr. Ferguson.

8 Q Was it Mr. Ferguson who inferred at an  
9 earlier time that that commitment would be paid?

10 A I would not say that because Mr. Ferguson  
11 is up to his words. My understanding was there was  
12 a meeting held with four or five members of the firm  
13 that this was going to be denied.

14 Q Of this firm?

15 A Yes. It was always my intention -- and, in  
16 fact, I recently wrote a letter asking about it. I  
17 just heard within the last week or so that this  
18 position of mine was invalid.

19 MR. REGIER: Was there any writing prior to  
20 that that supported this obligation?

21 DEPONENT: No, it was just an understanding,  
22 that was all.

23 MR. REGIER: What is the "Miscellaneous  
24 accounts receivable"?

25 DEPONENT: Nothing of any consequence, just

1 odds and ends. Probably eight or ten people.

2 Q (By Mr. Kovner) Small personal loans that  
3 you've made?

4 A Yeah. One fellow who had some serious  
5 problems some years ago and had somebody that had to  
6 have an operation, or some damn thing. I guess maybe  
7 seven or eight or nine people in that thing. I just  
8 keep the list hopefully some day I get lucky and  
9 someone will show up, but no one's shown up yet.

10 Q Which are the largest receivables in that  
11 group that you know of now?

12 A I think a thousand dollars from a man named  
13 Louis Livingston.

14 Q Did he give you a note?

15 A No.

16 Q The real estate home, that's the home on  
17 Davis Island?

18 A That's correct. Incidentally, the evaluation  
19 of that home, according to reliable people, has  
20 decreased by the price of the high-priced homes in  
21 the community.

22 Q Do you have an estimate as to its present  
23 value?

24 A A lot less than that.

25 Q What would be your estimate as of this time?

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1           A     I don't care to estimate, but I'm sure it's  
2 a lot less than that.

3           Q     On the three Renoir paintings, have they  
4 been appraised?

5           A     They belong to my wife. They were gifted  
6 to my wife back as early as '61, '62, '63. I have  
7 records of those.

8           Q     Have they been appraised or are they insured?

9           A     Insured.

10          Q     Do you have the insurance policy?

11          A     I believe so. Whether it's that amount or  
12 not -- as you know, high-priced art has gone down  
13 drastically, according to the most recent Polk Bennett  
14 situation, which I'm sure you're familiar with.

15          Q     The three Taluslo Tracks \*?

16          A     Belongs to my wife. They were gifted to  
17 her many years ago, probably ten or twelve years ago.

18          Q     Are they insured?

19          A     Yes.

20          Q     Do you have the insurance policy?

21          A     I believe so.

22          Q     The antiques?

23          A     Belongs to my wife and my daughter.

24          Q     Where are they located?

25          \* Phonetic Spelling

1           A     Well, my daughter has some. She was in the  
2 antique business. My wife has bought most of that  
3 stuff here. I have gifted stuff -- up until 1970 I  
4 gifted various antiques that were purchased. Once  
5 again, the valuation of some of those items is subject  
6 to question. There's been a great decrease in certain  
7 types of antiques. For example, I would say that  
8 silver has gone down dramatically, if you know anything  
9 about it.

10          Q     Are they insured?

11          A     At a very low figure.

12          Q     Have they been appraised?

13          A     I believe so, yes.

14          Q     Do you have copies of the appraisals?

15          A     I don't know.

16          Q     The furs and jewelry.

17          A     However, they are not mine, the antiques are  
18 not mine. The antiques belong to them. I gave them  
19 to my daughter and to my wife. I'm out of the antique  
20 and art business. Present jewelry belongs to my wife.

21               MR. MANRY: Just don't -- answer the  
22 question.

23          Q     Outside of the antiques are there any other  
24 properties here that belong to your daughter that are  
25 reflected on this sheet?

1 A To my daughter? Yes, in furnishings.

2 Q Does this purport to reflect a joint  
3 statement for you, your wife and your daughter or  
4 just you and your wife?

5 A Well, my wife's and mine and my daughter's  
6 participation. We had the stuff and it was all lumped  
7 into one general situation. And, you know, it --

8 Q Are the furs and jewelry insured?

9 A That I don't know. That belongs to my wife.  
10 She's in charge of that.

11 Q Have they been appraised?

12 A I don't know.

13 Q Did you get the information as to the  
14 evaluations for this statement from either the  
15 appraisals, or insurance value, or the insurance  
16 policies of those items which were asterisked?

17 A Those were given to me, possibly -- the furs  
18 and jewelry -- by my wife.

19 Q The furnishings. What furnishings are we  
20 referring to here?

21 A Just odds and ends, you know.

22 MR. MANRY: House furniture.

23 A Just household furnishings.

24 Q Those are owned by whom?

25 A Well, my daughter owns some of them and --



1 they're just ordinary, as you say, chairs and beds  
2 and the works. Nothing of that great -- no antique  
3 value of any kind. They're beds and chest of drawers,  
4 whatever you call furnishings. Have you ever tried  
5 to buy furnishings recently?

6 MR. REGIER: Are these still located in both  
7 Tampa and New York City?

8 DEPONENT: Not in New York. New York is  
9 closed. Some of those furnishings are probably  
10 in Virginia.

11 Q (By Mr. Kovner) What's in Virginia?

12 A My daughter's former residence.

13 MR. REGIER: I can be mistaken, I thought  
14 that in your previous deposition when we were  
15 asking about furnishings that you valued your  
16 furnishings in your Tampa home at no more than  
17 ten thousand dollars.

18 DEPONENT: Well, maybe they are ten thousand  
19 dollars. Furnishings, second-hand furniture is  
20 worth nothing. This probably covered some of the  
21 stuff that belongs to Susan which is in her home  
22 in Virginia. But you couldn't get -- you can't  
23 get nothing for furniture.

24 MR. REGIER: So this figure is based on  
25 purchase price rather than the value at May 30,

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1 1974?

2 DEPONENT: Probably. Hell, you could buy  
3 these chairs (Indicating) for nothing today.  
4 There's no value in used furnishings, particularly  
5 the fact that these furnishings are fifteen years  
6 old anyway.

7 Q (By Mr. Kovner) The thoroughbred horses.

8 A The thoroughbred horse is a horse of mine  
9 called Prince of Chance. He was a stallion who  
10 unfortunately died, foundered and died. We sent him  
11 to Venezuela, thought the cold climate could keep him  
12 alive. He was a valuable animal. He belonged to the  
13 Guggenheim estate. But unfortunately he died. There  
14 were three additional mares, one of which -- two of  
15 which broke down and one of which I gave away.

16 Q What was the basis of the thirty thousand  
17 dollar valuation in May of '74?

18 A Prince of Chance. Prince of Chance had a  
19 stud fee of twenty-five hundred dollars.

20 Q What was the cost of Prince of Chance?

21 A Twenty-five thousand dollars. But he was --  
22 when he died he was about -- oh, Christ, he must have  
23 been seventeen years old.

24 Q When did he die?

25 A Let's see, '59, one is '59, ten is '69 -- he

1 was at least fifteen years old when he died. He died  
2 in Caracas.

3 Q When?

4 A I don't know. I think he died in the first  
5 part of the year.

6 Q First part of this year?

7 A I don't know exactly.

8 Q But within the last several months?

9 A I don't know. I know he's dead.

10 Q He died after May 30, 1974?

11 A Well, he died after -- well, certainly he  
12 was not dead when we put him on here. He did throw  
13 one very good championship horse, I'm thankful to say,  
14 we have one very good animal. I don't know, he's  
15 racing now in the Caribbean. Beautiful, magnificent  
16 animal. Such a crime.

17 Q There's an item in here, "Owed to banks a  
18 hundred and eighty-five thousand dollars."

19 A Yep.

20 Q How did you derive that figure?

21 A I don't know. I added up what I owed the  
22 banks at that time, I guess.

23 Q What is meant by the term "Net"? Did that  
24 mean net worth of the two of you, you and your wife?

25 A No. I don't know.

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1 Q You don't know?

2 MR. MANRY: Could be self-explanatory.

3 A I think it's self-explanatory. I've given  
4 you all the information I have. I can get you a death  
5 -- well, I don't even have the horse any more.

6 Q Mr. Annis, I'm going to show you a statement  
7 dated May 1, 1973, and ask you if you've seen it before.

8 A Oh, God knows. I don't know. It looks like  
9 my handwriting but -- '73? God, such a bad copy. I  
10 don't know what the purpose of this is.

11 DEPONENT: (To Mr. Manry) What's the purpose  
12 of this?

13 MR. MANRY: He asked the question have you  
14 seen it. Can you identify it?

15 DEPONENT: Well, it looks to me like I have,  
16 looks like a copy of something I may have written  
17 two years ago.

18 Q (By Mr. Kovner) Was this issued -- I should  
19 say that this was produced by --

20 MR. REGIER: Flagship Bank.

21 Q -- the Flagship Bank. Does that refresh  
22 your recollection?

23 A No. It looks like my handwriting, that's  
24 all I can say.

25 Q Is that your signature on the upper right?



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1 A It looks like there's two signatures here.

2 Q Are they both yours?

3 A I don't know. One doesn't look like mine,  
4 but I guess the other is.

5 Q And what is this statement?

6 A I guess it's self-explanatory. It's a  
7 statement as of May 30, 1973.

8 Q Of the financial condition of you and your  
9 wife or of you alone?

10 A I have no knowledge. I assume it's my wife  
11 and myself as always.

12 Q Do you know what the item "Cash and treasury  
13 notes, seven hundred and twelve thousand dollars" --  
14 whose those were?

15 A I have no knowledge, no remembrance.

16 Q Do you know what the "New York Stock Exchange  
17 common, forty-two thousand" was?

18 A No, I do not.

19 Q Do you know what the "New York Stock Exchange  
20 convertible debenture, ten thousand dollars" is?

21 A That's one thing I remember. I think that  
22 was a private debenture for Bloomingdales, the  
23 Bloomingdale family.

24 Q I see. And that, you testified previously,  
25 was paid off subsequently?



1           A     Yes, that was Mandale, M-a-n-d-a-l-e,  
2     Mandale Corporation.

3           Q     Do you know what the accounts receivable of  
4     ninety-seven thousand dollars is?

5           A     I have no idea.     I must presume that must  
6     be the same deal, part of the Florida Downs deal.

7           Q     And the Brighton deal?

8           A     Well, it's probably something, a combination  
9     of that, yes, yes.   I'd like to say that that -- do  
10    you know Jim Currie --

11           MR. MANRY:   Don't.

12           A     I don't recall.

13           MR. MANRY:   If you can't recall don't answer the  
14    question.

15           A     I can't remember '73, I can't remember that.

16                   (Interruption in proceedings.)

17           MR. KOVNER:   What was the last question?

18           MR. MANRY:   The last question was accounts  
19    receivable.

20           DEPONENT:   I said I had no recollection.

21           Q     (By Mr. Kovner)   In 1973 you appeared to have  
22    valued your Florida Downs stock at two hundred and  
23    forty thousand dollars, is that correct?

24           A     That's what it says on here.

25           Q     Yeah.   Was there a reason why you felt it was

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1       worth nearly a hundred thousand dollars more in 1974?

2           A       Advice given to me by people who felt that  
3       they knew what was going on.

4           Q       Do you recall from whom you took that advice?

5           A       No.

6           Q       Was it based upon the financial records of  
7       Florida Downs, how they were doing in business?

8           A       No, I think it was based upon a lot of other  
9       factors.

10          Q       Such as --

11          A       Potential growth of the community, value of  
12       equipment, things like that, land values, and so on.

13          Q       By the way, has the deal with -- pursuant  
14       to which Florida Downs acquired the Gardenia land been  
15       completed?

16          A       Yes.

17          Q       How many acres was that?

18          A       Nine.

19          Q       Do you know how much was paid by Florida  
20       Downs for that land?

21          A       How much was paid for the land?

22          Q       Right, subject to the mortgage.

23          A       Of course, it's not land, it's stables.

24          Q       It's stables? I didn't realize that.

25          A       No, it's not land, it's stables. There's

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1 one hundred twenty stables -- stalls. No, it's not  
2 land.

3 Q I thought it was nine acres.

4 A God, no, no. They're stalls to keep horses  
5 in. I've testified to that. In fact, we had quite a  
6 discussion about it as to why they'd be so -- why it  
7 was so little amount of money received.

8 Q Do you know how much they paid for it?

9 A For the land?

10 Q They paid Gardenia for its property?

11 A For the entire proposition about a hundred  
12 and fifty thousand dollars.

13 Q Was the mortgage of Gardenia paid off with  
14 that?

15 A No, it was renegotiated.

16 Q What happened to the hundred and fifty  
17 thousand?

18 A Well, some of it is due in taxes, some I got  
19 some time ago, some was due Nelson Zambito, the race-  
20 track still owes Nelson money. That's it. As far as  
21 I'm concerned, I'm out.

22 Q How much were you paid of that hundred and  
23 fifty thousand?

24 A Well, I can't really answer that because  
25 there was a mortgage that I had paid on, made

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1 considerable amount of mortgage payments, and the  
2 whole mortgage was renegotiated. I would have to  
3 reconstruct the deal.

4 Q To the best of your recollection roughly how  
5 much of that hundred and fifty thousand was received?

6 A That I received myself?

7 Q That you did receive. You said you received  
8 some of it. How much did you receive, roughly?

9 A A hundred and thirty thousand, twenty-two --  
10 I've got to consider taxes owed, capital gains taxes  
11 owed, which is still unpaid and still owed by the  
12 racetrack as part of what's owed Nelson Zambito. Over  
13 and above the mortgage I may have come out -- and I  
14 don't know, I don't know -- maybe thirty thousand  
15 dollars, forty, thirty odd thousand dollars, maybe.

16 Q When did you receive that?

17 A Oh, months ago. Last January -- not this  
18 January, no, January before, before last, something  
19 like that.

20 Q You have an item --

21 A Something like that, I don't know the exact  
22 amount. There's still taxes due.

23 Q -- you have an item here called "West Coast  
24 Training Center, ninety thousand dollars." What was  
25 that?



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1 A Ninety thousand dollars? The mortgage.

2 Q A mortgage owned by you from West Coast  
3 Training Center?

4 A No. That was a mortgage on the West Coast  
5 Training Center, owed.

6 Q And what was your interest in the West Coast  
7 Training Center?

8 A Fifty percent.

9 Q I haven't seen that term before. Where is  
10 the West Coast Training Center?

11 A That's the one that -- the one that was sold  
12 to the racetrack, the nine acres.

13 Q Oh, this is the Gardenia's -- that's your  
14 interest in Gardenia.

15 A West Coast Training Center and Gardenia are  
16 the same thing. The trouble is West Coast Training  
17 Center is too damn long to type out. It was Fred  
18 Franches \* West Coast Training Center, Incorporated,  
19 so someone said, "Let's just call it one God damn name."

20 Q So you valued your interest, your net interest,  
21 then, in May 1, 1973, at approximately ninety thousand  
22 dollars?

23 A I valued -- yes, that's what I thought it  
24 was worth.

25 \* Phonetic Spelling

2



1 Q And you ultimately realized -- you're  
2 guessing and you don't want to be held to it --  
3 somewhere in the neighborhood of thirty thousand  
4 dollars?

5 A In the neighborhood of thirty thousand.

6 Q Is that "lolling" stock, the next item?

7 MR. REGIER: Racing.

8 Q Oh, racing stock, I'm sorry. I take it that

9 MR. MANRY: Thirty thousand.

10 MR. KOVNER: No, that's twenty-five thousand.

11 Q I assume the -- I think the breeding stock  
12 is Prince of Wales, right?

13 A Right.

14 Q What's the racing stock?

15 A No, Prince of Chance. I wish I'd have got  
16 that name, but someone got that forty years ago.

17 The racing stock that I owned along with my  
18 brother and with Nelson Zambito and maybe even with  
19 Jim Walters at that time and Buddy Austin, and we  
20 raced the horses and we raced the horses until they  
21 raced out. And that's all, they finish racing.

22 Q Under liabilities you listed "Owed to banks  
23 four hundred and forty-three thousand dollars."

24 A Uh-huh.

25 Q How did you reach that figure?

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1           A     I guess that was the amount of money I owed  
2     the banks in those days.

3           Q     And in preparing this statement that you  
4     submitted to the Flagship Bank was this, to the best  
5     of your knowledge, a rough approximation of your net  
6     worth at that time?

7           A     I would assume so. I guess, as I sit back  
8     and I check each item I assume so, yeah. I can't  
9     read half of it myself. Okay, I would say yes.

10          Q     I show you a statement in handwriting dated  
11     May 1, 1972, which was produced by the Flagship Bank  
12     among others at the examination of March 21, and ask  
13     you if you've ever seen this document.

14          A     I guess I have, I guess I've seen it.

15          Q     Is it in your own handwriting?

16          A     Yeah, it looks like my handwriting.

17          Q     Did you give it to the Flagship Bank and  
18     other banks in May of '72?

19          A     I guess so, yes. I can't recall.

20          Q     Is that your signature on the upper right?

21          A     Yes, but I can't recall anything about 1972.  
22     I don't recall anything.

23          Q     Well, to the best of your recollection, Mr.  
24     Annis, the item indicated "G.T. variable fund," were  
25     those assets in your custody account at the Exchange

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1           A     I guess that was the amount of money I owed  
2 the banks in those days.

3           Q     And in preparing this statement that you  
4 submitted to the Flagship Bank was this, to the best  
5 of your knowledge, a rough approximation of your net  
6 worth at that time?

7           A     I would assume so. I guess, as I sit back  
8 and I check each item I assume so, yeah. I can't  
9 read half of it myself. Okay, I would say yes.

10          Q     I show you a statement in handwriting dated  
11 May 1, 1972, which was produced by the Flagship Bank  
12 among others at the examination of March 21, and ask  
13 you if you've ever seen this document.

14          A     I guess I have, I guess I've seen it.

15          Q     Is it in your own handwriting?

16          A     Yeah, it looks like my handwriting.

17          Q     Did you give it to the Flagship Bank and  
18 other banks in May of '72?

19          A     I guess so, yes. I can't recall.

20          Q     Is that your signature on the upper right?

21          A     Yes, but I can't recall anything about 1972.  
22 I don't recall anything.

23          Q     Well, to the best of your recollection, Mr.  
24 Annis, the item indicated "G.T. variable fund," were  
25 those assets in your custody account at the Exchange

1 National Bank of Tampa?

2 A I have no recollection of that.

3 Q Here it refers to an investment in Florida  
4 Downs which you value at forty-two thousand dollars.

5 A I have no knowledge of what that was.

6 Q You have no knowledge as to whether that  
7 reflected your equity interest in Florida Downs?

8 A I have no knowledge as to what that notation  
9 means.

10 Q The item under "Liabilities owed to banks,  
11 four hundred and seventy thousand dollars," do you  
12 recall how you computed that?

13 A I have no recollection of this at all.

14 Q Th item marked "Guarantee on Florida note,  
15 two hundred and nineteen thousand dollars," was that  
16 the note that was subsequently paid off by your  
17 brother's loan to you?

18 A Yeah, possibly. Yeah, by golly, it's the  
19 same figure. That's interesting. Yeah, that's it,  
20 two nineteen.

21 Q And to the best of your knowledge was this  
22 your estimate as to the net worth of you and your wife  
23 as of May 1, 1972?

24 A To the best of my recollection.

25 Q Mr. Annis, I show you a financial statement



1 dated March 5, 1971, that was produced by Seminole  
2 Bank this morning in your presence -- which is part of  
3 Seminole Composite Exhibit 2 -- and ask you to look at  
4 it.

5 A 1971?

6 Q Yes.

7 A Oh, God.

8 MR. MANRY: Just look at it, Morton, just  
9 look at it and answer the question.

10 A What do you want to know about it?

11 MR. KOVNER: (To Mr. Regier) Do you have a  
12 copy of that there?

13 MR. REGIER: No, I don't, because, see, that  
14 was just given to us this morning.

15 MR. KOVNER: Just a second. I thought we  
16 had it earlier. We do, it's in one of the earlier  
17 ones.

18 DEPONENT: (Leaving the deposition room.)  
19 Continue gentlemen, I'll be just one moment.

20 MR. KOVNER: No, we don't.

21 (Interruption in proceedings.)

22 Q (By Mr. Kovner) In looking at this financial  
23 statement dated March 5, 1971, Mr. Annis, I ask you to  
24 look at the parent signature in the upper right-hand  
25 corner and ask you whether or not you recognize that



1 as your own.

2 A (Showing document to Mr. Manry)

3 MR. MANRY: Is it?

4 DEPONENT: I don't know.

5 Q You don't know? Do you recall preparing  
6 that statement?

7 A No.

8 Q May I see it, please? Do you recall ever  
9 owning, in 1971, an asset who's named Manhattan  
10 Independent debenture?

11 A That's Mandale.

12 Q Mandale?

13 A What's the amount?

14 Q Twenty thousand. That's Mandale?

15 A No -- yeah, I think that's Mandale. I think  
16 it was decreased over the years. What year is that?

17 Q 1971.

18 A I don't recall, but I think that's probably  
19 what it was. I wouldn't swear to it, though.

20 Q Mr. Annis, do you know whether or not you  
21 are in default under any of the notes you have given  
22 to any of the banks in Tampa, namely the Flagship Bank,  
23 Exchange National and First National or Seminole?

24 A Not to my knowledge.

Q Have you ever been in default, to your

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1 knowledge, under any of those loan arrangements?

2 A No, not to my knowledge, not to my  
3 recollection.

4 Q Now, at the last examination of the Exchange  
5 National Bank of Tampa there was produced a statement  
6 of your managing agency account from April of '71  
7 through March of '75, and this was an account --  
8 Counsel has copies of it -- wherein this account there  
9 were principally tax exempt municipal securities and  
10 interest, and certain amounts of principal were  
11 regularly paid over into your checking account.

12 A What date is that?

13 Q This is a record which runs from April of  
14 '71 through March 19 of this year. And I'm going to  
15 ask you certain questions in connection with withdrawals  
16 from this account that were made recently, if you have  
17 any recollection.

18 A Uh-huh.

19 Q In August of 1974 there are some substantial  
20 withdrawals from this account. Apparently a demand  
21 note in the amount of a hundred and twenty-five  
22 thousand dollars in favor of the Exchange National  
23 Bank was repaid to the extent of fifty thousand  
24 dollars.

25 A Correct.

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1 Q Do you recall that repayment?

2 A Yes.

3 Q Did they request a repayment?

4 A They did.

5 Q Did they explain why they were requesting a  
6 repayment?

7 A Somebody wanted -- I assume they wanted me to  
8 pay it.

9 Q On the same date this was deposited in your  
10 account, your checking account, twenty-eight thousand  
11 dollars, do you recall the reason for that?

12 A (Nodded negatively.) What's that?

13 Q August 13, 1974, this past August. Do you  
14 recall what you did with that money?

15 A I spent it, obviously. If you'd look at my  
16 checkbooks you'd see where I spent it.

17 Q On the same date there was transferred to a  
18 numbered account here of Exchange National, different  
19 from your checking account and different from your  
20 savings account, the sum of ninety thousand dollars.  
21 Do you recall into what account you placed that ninety  
22 thousand dollars?

23 A Was it in the Exchange Bank?

24 Q It appears to be in the Exchange Bank. It  
25 just indicates the number. I can show you the entry.



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1           A     It's all in the Exchange Bank? I think that  
2 may have been a purchase of commercial paper.

3           Q     What accounts did you maintain at the  
4 Exchange Bank other than the joint checking account,  
5 the one dollar savings account and this managing  
6 agency account?

7           A     No more managing agency account -- excuse me,  
8 I beg your pardon. That's all.

9           Q     Just those three?

10          A     Checking account, that account and that's it.

11          Q     I ask you, then, if you would look at this  
12 entry of August 13 of ninety thousand dollars, and  
13 this number, which is not the number of the managing  
14 agency account, not the number of your checking account  
15 and not the number of your savings account, and ask you  
16 where did that ninety thousand dollars go?

17          A     I have no idea unless it went to buy  
18 commercial paper.

19          Q     If it went to commercial paper could it have  
20 been deposited in an account?

21          A     Conceivably.

22          Q     Those are the sole three accounts, the  
23 managing agency, the joint checking and the savings  
24 are the sole three accounts you have maintained in any  
25 capacity at the Exchange?

1           A     I can't recall. You're asking me questions  
2 about different kinds of accounts I have at banks. I  
3 don't recall. I know that there was an agency account  
4 and a joint checking account, and there's an account  
5 that buys commercial paper and buys -- not CD's but  
6 treasury notes.

7           Q     The account that buys treasury notes, is it  
8 different from the managing agency account that buys  
9 General Telephone and Citizens of Southern --

10          A     I don't know, I don't know.

11          Q     You don't know?

12          A     No.

13          Q     In July of 1973 a hundred thousand dollars  
14 was withdrawn from this managing agency account. Was  
15 that the hundred thousand dollars that was used to  
16 purchase your interest in Master Packaging?

17          A     If it confirms the dates, yes.

18          Q     It was July 3 and July 6.

19          A     Yes, that would be it.

20          Q     Now, outside of those, that hundred thousand  
21 dollars in the year 1973, there is reflected the  
22 withdrawal from the managing agency account and deposits  
23 in your individual -- or, your joint checking account  
24 approximately in excess of a hundred and fifty  
25 thousand dollars both in interest payments and in



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1 withdrawals from principal.

2 A (Nodded affirmatively.)

3 Q Do you recall the purpose to which that  
4 hundred and fifty thousand dollars' of withdrawals  
5 were devoted?

6 A I can't until I look at the checkbooks.

7 Q Do you recall any major investments that you  
8 made during 1973 outside of Master Packaging, outside  
9 of managing agency account?

10 A No.

11 Q The withdrawals during 1972, most of 1972,  
12 1973 and until the ninety thousand dollars was withdrawn  
13 in August of 1974 involved withdrawals of regular  
14 interest payments and, in addition, at the rate of  
15 from five to ten thousand dollars or more per month.  
16 Were these withdrawals exclusively for personal living  
17 expenses?

18 A (Nodded affirmatively.) To my knowledge, yes.

19 Q Could you estimate approximately what you  
20 and your wife's personal living expenses were in a year?

21 A Only by looking through checkbooks.

22 Q Were there any other accounts through which  
23 you purchased municipal bonds, treasury bills or CD's  
24 other than the managing agency account at Exchange  
25 National?

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1           A     Not to my recollection. Excuse me. A debt  
2 was paid off at the First National Bank by the sale of  
3 some securities. That's the only other one I can  
4 recall.

5           Q     Do you know in what amount that debt was  
6 paid off, roughly, at First National?

7           A     I would say it was a considerably large debt  
8 which was taken from the First National Bank by another  
9 bank and then the other bank sold securities and paid  
10 it off with a complete liquidation of the obligation.

11          Q     But you still owe money to the First  
12 National, don't you?

13          A     Yes.

14          Q     Do you know how much you owe to them?

15          A     Unsecured, some forty thousand dollars.

16          Q     Is that the forty-eight thousand two hundred  
17 dollars' note that you took out in October?

18          A     Yes, something like that.

19          Q     And that's unsecured?

20          A     Correct.

21          Q     Do you know the amount now owing to the  
22 Flagship? They produced a note of fifty-three --

23          A     Fifty odd.

24          Q     Fifty odd. Is that secured solely by the  
25 three thousand shares of General Cigar from your

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1 brother?

2 A No, there is a different security. What it  
3 is I cannot recall at the moment.

4 DEPONENT: Ted, I would like to say this. I  
5 fail to see where all this is apropos.

6 MR. MANRY: Well, they have a right to ask  
7 these questions.

8 DEPONENT: I know. I'm willing to acknowledge  
9 the debts. You've been through the bank accounts,  
10 you've seen all the check stubs I've written.  
11 You've asked me what happened to it. You can just  
12 check it and see that anything withdrawn from  
13 the agency account at First National, at the  
14 Exchange --

15 MR. MANRY: Morton --

16 DEPONENT: Well, Jesus Christ, Ted, I can't  
17 sit here and take another hour of this --

18 MR. MANRY: I know, I know, we've discussed  
19 this before.

20 DEPONENT: -- this nit-picking. I know if  
21 it's pertinent --

22 MANRY: It is. They have a right to know.

23 MR. KOVNER: Mr. Annis, we're going to take  
24 a break shortly --

25 DEPONENT: I don't want to take a break, I



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1 want to answer your questions but --

2 MR. KOVNER: Let me say it's obviously  
3 difficult for us when you say you don't know where  
4 a ninety thousand dollar deposit -- withdrawal  
5 was made last August into a numbered account and  
6 you can't identify that account. That obviously  
7 presents problems for us.

8 DEPONENT: Look, I'm not trying to present  
9 problems to you --

10 MR. KOVNER: It's not that long ago.

11 DEPONENT: There are substantial transactions.  
12 I can't answer those things.

13 MR. MARRY: Just do the best you can.

14 DEPONENT: I'm answering to the best of my  
15 ability.

16 Q (By Mr. Kovner) Was there a reason that the  
17 Intercontinental indebtedness or your obligations in  
18 connection with Intercontinental were not included on  
19 your financial statements that were submitted to the  
20 banks?

21 A Say that again?

22 (Reporter read the question.)

23 A I didn't consider them as an obligation until  
24 such time as it was proven that the case was decided  
25 against me.



1 Q I'm not referring to the obligations to the  
2 Plaintiff, Weitnauer, I'm talking about the obligations  
3 to the National Bank of North America.

4 A I have all those completely collateralized.

5 Q All were completely collateralized?

6 A Oh, yes.

7 Q By assets other than those listed on these  
8 financial statements?

9 A Correct, correct.

10 MR. REGIER: Could that imply that there  
11 were other assets that were not used in  
12 collateralizing other loans that do not appear  
13 on your financial statements?

14 DEPONENT: I don't know what you mean by  
15 that.

16 MR. REGIER: Well, the fact that when you  
17 listed your assets on the financial statements  
18 that we've been discussing you did not list  
19 certain other assets because they'd be used to  
20 collateralize certain liabilities which you also  
21 did not show, does that mean there are other  
22 assets and other liabilities that did not appear  
23 because they balance out?

24 DEPONENT: No. I kept that as a separate  
25 and distinct concept.

1 MR. REGIER: That's the only one that you  
2 did that with?

3 DEPONENT: Yes, sir.

4 Q (By Mr. Kovner) To the best of your  
5 recollection was the ninety thousand dollars withdrawn  
6 from the managing agency account in August of '74  
7 used to repay any loans?

8 A I can't answer that.

9 Q In 1973 you received four checks of three  
10 thousand dollars each from Lake Magdalene Farms.

11 Nelson Zambito.

12 Q That's his company?

13 A Yes.

14 Q What were they for?

15 A Sale of horses, my share of the sale of  
16 horses, I guess.

17 Q According to your checking account you, in  
18 August, 1973, you wired a hundred and ninety thousand  
19 dollars to the Citizens and Southern Bank.

20 A That was the payment of the First National  
21 loan.

22 Q To the Citizens and Southern Bank?

23 A Yeah, the bank, yeah.

24 Q How did that pay the First National loan?

25 A I owed the First National a certain amount of

1 money, that was the amount. And the director, the man  
2 who was then in charge of the account who has since  
3 left, said he would like to take it out of the First  
4 National Bank and transfer it to the Citizens Southern,  
5 which he did. And then I consequently paid off the  
6 Citizens Southern by liquidating that security.

7 Q You don't owe anything to Citizens Southern  
8 now?

9 A No, I do not.

10 Q Do you have any outstanding obligations to  
11 National Bank of North America?

12 A Very small, a few thousand dollars.

13 Q Previously you testified that you guaranteed  
14 obligations of Master Packaging to Citizens and  
15 Southern Bank and to the National Services Industry.

16 A Correct.

17 Q Do you now know whether Mr. Turkel guaranteed  
18 these obligations?

19 A Yes.

20 Q The answer is he did?

21 A I believe so.

22 Q Are those obligations still outstanding?

23 A The National Service is, the Citizens  
24 Southern I think is paid down to almost nothing.

25 Q Do you know how much is owing to the National



1 Services Industries?

2 A I would say some, oh -- I don't know, I'd  
3 have to say two hundred thousand dollars, but I will  
4 not give you exact figures because I don't know.

5 Q And you remain jointly liable with Mr.  
6 Turkel and no other person as of the present time on  
7 that obligation?

A And of the corporation.

9 Q Yes, as guarantor.

10 A Correct.

11 Q Now, what happened to your consulting  
12 agreement with Master Packaging? I gather there's  
13 been some change in that since we last talked.

14 A Yes, there's been some changes.

15 Q What are those changes and when did they  
16 occur?

17 A Well, because of the state of my health I  
18 thought it would be better for me to make some changes  
19 and have money paid not to me as an individual so much  
20 and to put it in with a whole new concept, which I have  
21 not yet really developed as yet. I just can't at this  
22 particular moment delve into it because, frankly, I'm  
23 too fatigued.

24 I still am the chairman of the board of  
25 Master Packaging but I have no stock or no interest.



1 Q But the consulting arrangement, the change  
2 in the consulting arrangement, has yet to be completed?

3 A No, it is in the process of being completed.

4 Q It's in the process, so it has not yet been  
5 completed?

6 A Not actually, not yet.

7 Q You've received no further salary since  
8 October of '74?

9 A Not as salary.

10 Q Have you received it in any other capacity?

11 A As commissions.

12 Q As commissions. Commissions on what  
13 transactions?

14 A Well, certain sales work that I do for them.

15 Q What kinds of sales have you earned commissions  
16 on?

17 A Well, for example -- you mean a specific sale?  
18 Like the sale of -- to the citrus industry of acemats  
19 which were made in large quantities by Master Packaging,  
20 a polyethylene product. The development of other  
21 accounts such as accounts around the country that I  
22 have opened up -- not myself personally, I'm not a  
23 technician, but because of my leads and influence,  
24 and so on and so forth.

25 Q When was that sale effectuated?

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1 A What sale?

2 Q That you just described to the citrus  
3 industry. Within recent months?

4 A It started to -- it took about a year to get  
5 going -- I'd say it started to get going probably a few  
6 months ago.

7 Q During what period did you receive  
8 commissions?

9 A From then on.

10 Q And you are still receiving commissions on  
11 those sales?

12 A Yes, I still receive -- I still work to the  
13 best of my ability, I'm still working for the company.

14 Q Now, Mr. Annis, I did want to give you this  
15 document, which is a restraining notice. I gather  
16 your Counsel has questions as to its validity, but I  
17 do want --

18 DEPONENT: What does that mean?

19 MR. KOVNER: I want to give you a restraining  
20 notice.

21 MR. MANRY: Don't worry about it.

22 MR. KOVNER: It's a restraining notice under  
23 New York's Civil Practice Law and Rules which is  
24 served in connection with the outstanding judgment.

25 MR. MANRY: It has not been served.

1 MR. KOVNER: I'm serving it on Mr. Annis  
2 right now. You may contest it and challenge its  
3 validity and I understand that you have questions  
4 with respect to it but I'm serving it on him now  
5 because I -- well --

6 DEPONENT: I don't even know what it is.

7 MR. KOVNER: It's a restraining --

8 MR. MANRY: I'll explain it, Mor... , don't  
9 worry about it. It has no force and effect in  
10 the state of Florida.

11 DEPONENT: All right.

12 MR. KOVNER: In view of your condition and  
13 the doctor's appointment now we'll adjourn this  
14 examination and we'll discuss with Counsel the  
15 remaining open documents we'll need. At that  
16 point, of course, we'll have a result, I presume,  
17 shortly of the appeal and we can discuss further  
18 steps at that time.

19 STIPULATION

20 Thereupon, it was stipulated by and between  
21 Counsel for the respective parties, and the  
22 witness, that the reading and signing of this  
23 deposition by the witness was not waived. It  
24 was further stipulated by Counsel that filing  
25 of the deposition with the clerk of court for

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1           which it was taken, and notice thereof, were  
2           likewise not waived.

3                               -----

4   Thereupon, the taking of this deposition was concluded  
5   at 1:15 p.m.

6                               I have read the foregoing pages, 1  
7                               through 103, inclusive, and herewith  
8                               subscribe to same as a correct  
9                               transcription of the answers made  
10                              by me to the questions therein  
11                              recorded, subject to and including  
12                              the attached list of corrections.

13  
14                              \_\_\_\_\_  
15                              Deponent  
16  
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CERTIFICATE OF REPORTER

STATE OF FLORIDA :

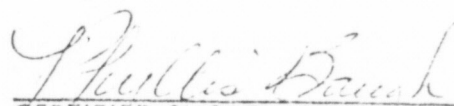
COUNTY OF HILLSBOROUGH :

I, PHYLLIS BAUGH, Certified Shorthand  
Reporter and Notary Public in and for the State of Florida at Large:

DO HEREBY CERTIFY That the foregoing deposition was taken before  
me at the time and place therein designated; that before testimony was taken  
the deponent was by me duly sworn; that my shorthand notes were thereafter  
reduced to typewriting under my supervision; and the foregoing pages,  
numbered 1 through 103, is a true record of the testimony  
given by the witness.

I FURTHER CERTIFY That I am not a relative, employee, attorney or  
counsel of any of the parties, nor relative or employee of such attorney or  
counsel, or financially interested in the foregoing action.

WITNESS MY HAND AND SEAL THIS, the 17th DAY OF  
April, 1975, A.D., IN THE CITY OF TAMPA,  
COUNTY OF HILLSBOROUGH, STATE OF FLORIDA.

  
\_\_\_\_\_  
CERTIFIED SHORTHAND REPORTER  
NOTARY PUBLIC  
State of Florida at Large

My commission expires November 15, 1975.

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CERTIFICATE OF REPORTER

STATE OF FLORIDA )

COUNTY OF HILLSBOROUGH )

I, Phyllis Baugh, Certified Shorthand Reporter and Notary Public, State of Florida at Large,

DO HEREBY CERTIFY that the foregoing deposition was taken before me at the time and place set forth in the caption thereof; that the deponent therein, MORTON L. ANNIS, was by me duly sworn on oath to testify the truth; that the proceedings of said deposition were stenographically reported by me in shorthand, and that the foregoing pages, numbered 1 through 116, inclusive, constitute a true and correct transcription of my said stenographic report.

I FURTHER CERTIFY that I am not related to nor employed by any of the parties to the instant cause of action or counsel therein, and that I have no interest in the events or outcome thereof.

IN WITNESS WHEREOF I have hereunto affixed my official signature and seal of office this 4th day of February, 1975, at Tampa, Hillsborough County, Florida.

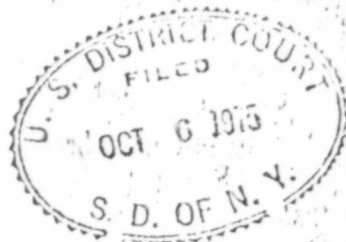
*Phyllis Baugh*  
PHYLLIS BAUGH, Certified Shorthand Reporter  
Notary Public, State of Florida at Large.  
My Commission expires November 15, 1975.

Transcribed by: Connie Riley

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

copy



----- x  
WEITNAUER TRADING COMPANY, LTD., :

Plaintiff-Judgment Creditor, :

- against - :

71 Civ. 782

MORTON L. ANNIS, :

Defendant-Judgment Debtor. :

#43203

----- x  
A P P E A R A N C E S:

Messrs. Lankenau, Kovner & Bickford  
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Creditor

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by Leslie D. Corwin, Esq.  
Attorneys for Defendant-Judgment  
Debtor

CARTER, District Judge

O P I N I O N

Defendant Morton L. Annis moves to reduce what he calls a "monthly income execution" which was issued to General Cigar Corporation (General Cigar), a company with which defendant has a consulting contract. Plaintiff cross-moves pursuant to Rule 69(a), F.R.Civ.P., and New York C.P.L.R. §5226 for an installment payment order requiring defendant to pay plaintiff \$5,000 per month.

Background Facts

On June 19, 1974, plaintiff secured a judgment against Annis for \$182,065.44 in an action upon a guarantee.<sup>1</sup> On October 7, 1974, a restraining notice

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<sup>1</sup> On September 11, 1974, a modified judgment was entered for the same amount. The judgment was affirmed by the Court of Appeals for the Second Circuit on May 28, 1975, in an opinion reported at 516 F. 2d 878.



was issued to General Cigar pursuant to C.P.L.R. §5222, restraining it from transferring to Annis any money or property due or to become due to Annis.<sup>2</sup> By letter dated October 14, 1974, Max B. Meyer, vice president and secretary of General Cigar, notified Annis that because of the restraining notice, General Cigar refused to continue making payments to Annis pursuant to a consulting agreement dated June 10, 1971. On or about January 21, 1975, a transcript of the judgment was docketed in the office of the County Clerk in New York County. On or about February 21, 1975, plaintiff's counsel issued an "execution with notice garnishee" to General Cigar against "[m]oneys past due pursuant to consulting Agreement." The sheriff for New York County served the execution on General Cigar on or about February 26, 1975. General Cigar's "Answers to Information Subpoena" filed on or about February 28, 1975, stated that as of February 1, 1975, there was due

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<sup>2</sup> Personal service of the restraining notice was not made on Annis until April 4, 1975, when plaintiff's counsel personally served Annis during a deposition taken in Florida.

and owing to defendant under the consulting agreement, \$10,416.66. Defendant is entitled to \$2,083 monthly under the agreement, and the fund held by General Cigar has increased by this amount per month since February because the restraining notice has prevented General Cigar from distributing any payments to defendant.

The Execution of  
February 1975

On this motion, defendant's principal effort has been to characterize the February 21 execution as an "income execution" issued pursuant to C.P.L.R. §5231 and subject to the ten per cent limitation of that section. Annis therefore contends that only ten per cent of each monthly payment or \$208.30 is subject to the execution.

Plaintiff responds that the execution was issued not under §5231, but under §5230, which is not, by its own terms, limited to ten per cent of the judgment debtor's earnings. Furthermore, plaintiff contends,

the general exemption of §5205(e)(2)<sup>3</sup> is inapplicable since the consulting payments are not "earnings," and even if they are earnings, any services performed by Annis were not rendered within 60 days before delivery of an income execution to the sheriff or a motion to secure the application of Annis's earnings to the satisfaction of the judgment.

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3

Section 5205(e)(2) provides as follows:

"(e) Income exemptions. The following personal property is exempt from application to the satisfaction of a money judgment, except such part as a court determines to be unnecessary for the reasonable requirements of the judgment debtor and his dependents:

\* \* \*

"2. ninety per cent of the earnings of the judgment debtor for his personal services rendered within sixty days before, and at any time after, an income execution is delivered to the sheriff or a motion is made to secure the application of the judgment debtor's earnings to the satisfaction of the judgment \*\*\*."

Determination

Plaintiff's execution of February 21, 1975, was clearly issued pursuant to §5230.<sup>4</sup> Defendant's attempt to characterize it as "income execution," and to invoke the ten per cent limitation of §5231 must fail.

The February 21 execution states that it covers consulting payments which are "past due," rather than future payments. Assuming that the consulting payments are earnings or wages, such payments as are past due would appear to be subject to execution under §5230.<sup>5</sup>

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<sup>4</sup> The execution (Exhibit E to Affidavit of Leslie D. Corwin, sworn to April 30, 1975) appears to contain the information required by §5230, but does not contain the additional information required by §5231.

Section 5230 of the C.P.L.R. is made applicable to this proceeding by Rule 69(a), F.R.Civ.P., which provides in pertinent part:

"(a) \*\*\* The procedure on execution, in proceedings supplementary to and in aid of a judgment, and in proceedings on and in aid of execution shall be in accordance with the practice and procedure of the state in which the district court is held, existing at the time the remedy is sought, except that any statute of the United States governs to the extent that it is applicable.  
\*\*\* "

<sup>5</sup> The execution under §5230 is subject only to the limitations of §5205, not to the 10% limitation of §5231.



Girard Trust Bank v. Gotham Football Club, Inc., 31 A.D. 2d 142, 146, 295 N.Y.S. 2d 741, 745 (1st Dept. 1968); Reliance Investing Co. v. Power, 136 Misc. 694, 240 N.Y.S. 585 (S. Ct. 1930); Hayward v. Hayward, 178 A.D. 92, 164 N.Y.S. 877 (1st Dept. 1917). Future earnings that are not yet due and owing are not subject to §5230, but may be reached only by an income execution issued pursuant to §5231. Shambach v. General Electric Co., 6 A.D. 2d 327, 176 N.Y.S. 2d 888 (3d Dept. 1958); Hayward v. Hayward, supra.

It seems clear that General Cigar has allowed Annis's payments to accumulate and become "past due"-- thus placing them within range of a §5230 execution-- only because General Cigar believed that it was barred from making the payments to Annis by the October 7, 1974, restraining notice. However, it is established that a restraining notice cannot properly prevent an employer from paying wages or earnings to a judgment debtor. Silbert v. Silbert, 25 A.D. 2d 570, 267 N.Y.S. 2d 744 (2d Dept. 1966); Gill v. Schwartz, 273 A.D. 606, 78 N.Y.S. 2d 721 (1st Dept. 1948), appeal dismissed, 300 N.Y. 625, 90 N.E. 2d 488 (1950); Siegel, Supplementary Practice Commentary (1964), 7B McKinney's Consolidated Laws (1974-75 Supp.) at 101; 6 Weinstein, Korn & Miller, New York Civil Practice, §5251.14 at 52-765 (1974); see Widder

Bros. Inc. v. Kaffee, 19 A.D. 2d 817, 818, 243 N.Y.S. 2d 601, 603 (1st Dept. 1963); Power v. Loonam, 49 Misc. 2d 127, 266 N.Y.S. 2d 865 (S. Ct. 1966); Matter of Chamberlain v. Chamberlain, 34 Misc. 2d 1072, 231 N.Y.S. 2d 862 (S. Ct. 1962).<sup>6</sup> Thus, if Annis's payments may be deemed wages or earnings, plaintiff had no right to cause General Cigar to refuse to make payment to Annis and thereby accumulate the "past due" funds upon which plaintiff seeks to execute. Plaintiff will not be permitted to profit from wrongdoing, and if the October 7 restraining notice was improper, plaintiff is not entitled to execute under §5230 on the fund accumulated solely as a result of the notice.<sup>7</sup>

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<sup>6</sup> The apparent theory underlying this proscription is that it would be contrary to the policy of §5205(e)(2)--which exempts 90% of earnings for services rendered within a specified period from execution unless the court determines that such earnings are unnecessary for maintenance and support--to allow the judgment creditor to tie up the debtor's entire earnings by means of a restraining notice before the court can make the required determination. Lower court cases indicate that the ban on restraining notices applies only to 10% of earnings, e.g. Power v. Loonam, supra; but Silbert v. Silbert, supra, and Gill v. Schwartz, supra, contain no such limitation.

<sup>7</sup> Any other conclusion would allow judgment creditors to bypass the 10% limitation of §5231. A judgment creditor would need only to issue a restraining notice to the debtor's employer, wait until a substantial sum had accumulated, and execute on the accumulated funds under §5230. The burden would be on the debtor to prove that a portion of the fund qualified for exemption under §5205.

As noted, plaintiff contends that the consulting payments are not earnings or wages since defendant has not rendered services under the contract for the past year.<sup>1</sup> Plaintiff claims that the payments are a "pay-out" on a 1969 employment contract which was "spread" for tax reasons.

Even adopting plaintiff's view that the payments are a "pay-out" on a 1969 "employment contract," (Affidavit of Victor A. Kovner, sworn to May 1, 1975, ¶21; Affidavit of Victor A. Kovner, sworn to May 7, 1975, ¶11), the payments are compensation for services rendered, and are therefore earnings or wages. The recitation (page 1) of the June 10, 1971, agreement supports the view that the payments are compensation for past services. Moreover, the stated consideration for the payments are consulting services to be rendered by defendant for a

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<sup>8</sup> Plaintiff also notes that General Cigar does not withhold Social Security or income taxes for Annis. However, under Regulation §31.3401 (a)-2, cited by plaintiff, Annis's payments clearly constitute wages, since the June 10, 1971 contract indicates that the payments are compensation for past (page 1, recitation) and future services.

maximum of 60 days each year. (June 10, 1971, agreement, ¶4.) The fact that Annis may not actually have worked for a considerable period does not vitiate the employment relationship or deprive the payments of their character as earnings or wages. See Bonwit Teller, Inc. v. Marguerite Yvonne, Inc., 183 Misc. 458, 48 N.Y.S. 2d 356 (Mun. Ct. 1944). To hold that the payments are wages or earnings is consistent with the broad definitions of those terms under which bonuses, commissions and various other forms of compensation have been held to be earnings or wages. See Girard Trust Bank v. Gotham Football Club, Inc., *supra*; Gutterson v. Gutterson, 263 A.D. 923, 32 N.Y.S. 2d 483 (3d Dept. 1942).

In summary, the October 7, 1974, restraining notice was improper since issued against wages and earnings of the debtor, and the execution issued against the fund accumulated as a result of the improper notice should be vacated. In addition, the court's decision of May 28, 1975, denying a motion to vacate the October 7, 1974, restraining notice is recalled, and that motion is granted.



Installment Payment  
Order - §5226 - Determination

Under §5226 of the C.P.L.R.,<sup>9</sup> the court may order the judgment debtor<sup>10</sup> to make specified "installment payments" to the judgment creditor upon a showing that "the judgment debtor is receiving or will receive money from any source, or is attempting to impede the judgment creditor by rendering services without adequate compensation \*\*\* ." See Uni-Serv Corp. v. Linker, 62 Misc. 2d 861, 311 N.Y.S. 2d 726 (Civ. Ct. N.Y. 1970). (Installment payment order improperly made where there was no proof of income or assets or that services were rendered without adequate compensation).

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<sup>9</sup> This section is made applicable herein by Rule 69(a), F.R.Civ.P.

<sup>10</sup> This order, unlike the execution issued pursuant to §5230 and the income execution provided by §5231, runs only against the judgment debtor, not against a garnishee such as General Cigar in the instant case. Wachtell, New York Practice under the CPLR--Student Edition (1973), at 355 n.81.

In the present case, both of these (alternative) requirements are met. Annis will receive \$25,000 per year under his agreement with General Cigar.

Moreover, it appears that Annis has diverted or otherwise secreted his consulting compensation of \$35,000 per year from Master Packaging, a company of which he has been chairman of the board since 1973, in an effort to frustrate collection of this judgment. In his deposition taken January 31, 1975, Annis testified that his payments from Master Packaging had been stopped as of the autumn of 1974, pursuant to "[n]ew negotiations now in process" (Tr. 43, 65),<sup>11</sup> although he stated that the agreement was still in effect. Following the January 31, 1975, deposition, Annis sent plaintiff's counsel certain "corrections," of his deposition among which appears the following:

" \*\*\* [The Master Packaging] contract is no longer with M. L. Annis. Sr. It has been assigned to Astro Metric." (Exhibit E to Koyner Affidavit of May 1, 1975)." <sup>12</sup>

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<sup>11</sup> The citation "Tr." refers to the transcript of a deposition of Annis taken January 31, 1975. The citation "2 Tr." refers to the deposition taken April 4, 1975.

<sup>12</sup> This statement is difficult to square with Annis's testimony of April 4, 1975, that he was to receive payments from Master Packaging on a commission basis. (2 Tr. 99-100).

In his January 31 deposition, however, Annis had testified that he had sold all of his interest in Astro Metric, of which he had been co-owner, to his secretary, one Mrs. Riffe, for the modest sum of \$500. (Tr. 6, 28.). These acts are a transparent attempt to place the Master Packaging payments out of reach of an execution or garnishment, and, of themselves, are sufficient to justify entry of an installment payment order.

In determining the amount of the payments, the court must consider "the reasonable requirements of the judgment debtor and his dependents;" the amount of money being received by the judgment debtor; the reasonable value of the services being rendered by the judgment debtor without adequate compensation; and the amount of the judgment. <sup>13</sup>

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<sup>13</sup> There are evidently no other judgments against Annis, a factor which is also to be considered under the statute.

Reasonable Requirements of  
Judgment Debtor and Depen-  
dents

Contrary to defendant's contention, the court must examine all of Annis's assets and resources in relation to his expected expenditures and obligations in order to ascertain his reasonable requirements. See McDonnell v. Birrell, 321 F. 2d 946, 948 (2d Cir. 1963).

Defendant has offered little proof of his expenditures and obligations other than to state that the General Cigar payments are necessary to meet large medical and hospital bills for treatments for cancer. There is evidence showing that from mid-1972 until about July, 1974, he regularly withdrew \$5,000 - \$10,000 per month from his bank accounts for living expenses. (2 Tr. 92).

Annis cannot claim any obligation on behalf of "dependents" since both of his children are adults, and his testimony shows that his wife is an extremely wealthy woman (to a significant degree because of Annis's transfers of property to her ).

Turning to Annis's net worth, a point of reference in the ebb and flow of his complicated affairs is the most recent financial statement offered on this motion dated May 30, 1974, a joint statement for Annis and his wife (2 Tr. 25):



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M. L. ANNIS

## STATEMENT

May 30, 1974

CASH N BANK

\$ 364,000

## ACCOUNTS RECEIVABLE:

Master Packaging, Tampa	\$ 54,000
Brighton Engineering - Frankfort, Kentucky	74,000
Florida Downs	10,000
Florida Downs (Stock)	63,000
Miscellaneous	<u>6,000</u>

207,000

REAL ESTATE HOME

250,000

## OWNER ASSETS:

## ART COLLECTION

* Renoir (3)	\$ 120,000
* Toulouse-Lautrec (3)	25,000
* Antiques	118,000
* Furs & Jewelry	103,000
Furnishings (Tampa & NYC)	<u>45,000</u>

411,000

Thoroughbred Horses	\$ 30,000
Florida Downs Stock (Net)	320,000
Master Packaging Equity	<u>600,000</u>

930,000

\$ 2,162,000

185,000

OWED TO BANKS

\$ 1,977,000

NET

\* Appraised or insured value

According to Annis's testimony, several of these items may be excluded from consideration. The Brighton Engineering (2 Tr. 61-63) and Florida Downs receivables (2 Tr. 65,67) must be written off as uncollectible; the three Renoirs and the three Toulouse-Lautrecs belong to his wife (2 Tr. 70 ), as do all of the furs and jewelry (2 Tr. 72); the antiques are owned by his wife and daughter (2 Tr. 71); the furnishings belonging to defendant as opposed to his wife and daughter are worth at most \$10,000; and the thoroughbred (of which there was apparently only one) died this year. (2 Tr. 74-75). The court will assume that the foregoing testimony is true for purposes of arriving at a minimum estimate of Annis's net worth.

Turning to the Master Packaging receivable (\$50,000) <sup>14</sup> and equity (\$600,000), both of these assets were transferred to Annis's son, Morton, Jr., on or about June 30, 1974, in payment of an alleged debt of \$98,000 to Morton, Jr. (Tr. 33-34, 44; 2 Tr. 19-20, 24, 29). Defendant testified that the Master Packaging

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<sup>14</sup> This is erroneously given as \$54,000 in the financial statement.

shares were valued at their cost to him the previous year of \$50,000 (Tr. 33-34; 2 Tr. 26-27), and he testified that since May 30, 1974, when the stock was valued at \$600,000, <sup>15</sup> there had indeed been a "radical" decrease in its value due to a decline in the garment industry, its principal customer. (2 Tr. 22-23).

It seems to the court that for purposes of determining the debtor's resources and needs, this transfer should be disregarded because of its proximity to the original judgment in this case (June 19, 1974); the large disparity between the stated value of the equity as of one month before the transfer (\$600,000) and the amount of the alleged debt; the failure of defendant to substantiate the genuineness of the debt; <sup>16</sup> and the fact that the alleged debt was paid to defendant's son.

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<sup>15</sup> The \$600,000 figure was based on a valuation by the Citizens of Southern Bank. (2 Tr. 27).

<sup>16</sup> Defendant claims that the debt arose when, acting as trustee of a certain trust for his son, he withdrew securities from the trust for his personal use. The securities are alleged to have been lost in the bankruptcy of Intercontinental Wine and Spirits company. (Tr. 35-36).

It will be noted that the alleged debt to Morton, Jr. is not listed on the May 30, 1974, statement.

Defendant testified that his home, owned jointly by Annis and his wife free and clear of any mortgage, is now worth considerably less than the \$250,000 value placed on it as of May 30, 1974. (2 Tr. 69-70).

Turning to the Florida Downs stock, defendant testified in his first deposition that the stock was security for loans of approximately \$268,000-278,000 plus the value of 3,000 shares of General Cigar stock. (Tr. 16-23).<sup>17</sup> Whether the term, "Net," in the May 30, 1974, statement means net of these obligations is not clear; but in the absence of some contrary explanation by the parties, the court will adopt this as the most reasonable explanation.

Defendant testified that he had no idea how much of the \$364,000 "cash in bank" belonged to him and how much to his wife. (2 Tr. 58). However, the fact that in August, 1974 alone, defendant transferred at least \$168,000<sup>18</sup> in cash among his various bank

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<sup>17</sup> Contrary to plaintiff's suggestion, Annis's annual gifts of Florida Downs stock to his children in amounts equal to the maximum gift tax exclusion seem wholly above board.

<sup>18</sup> Fifty thousand dollars of this amount was used in partial payment of a demand note from Exchange National Bank. Excluding this amount, defendant still had a minimum of \$118,000 in cash in August, 1974.



accounts (2 Tr. 88-89) may indicate the magnitude of his own share.

In summary, even discounting the value of the Master Packaging stock by an arbitrary 50 per cent, it appears that the minimum value of Annis's assets is approximately \$890,000 - \$915,000.<sup>19</sup> Annis's liabilities to banks are approximately \$100,000-\$180,000,<sup>20</sup> and his minimum net worth therefore appears to be in the neighborhood of \$700,000-\$800,000.<sup>21</sup>

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<sup>19</sup> This assumes that Annis has approximately \$120,000 cash (based on the August, 1974 figure); that his interest in the house is worth \$100,000-\$125,000; that the Master Packaging obligation and stock are worth \$50,000 and \$300,000, respectively; and that the net value of the Florida Downs stock is \$320,000.

<sup>20</sup> The uncertainty concerns the \$75,000-\$80,000 obligation to Exchange National Bank which may have been taken into account previously when the Florida Downs stock which secures it was discounted.

<sup>21</sup> These figures do not purport to be an accurate statement of Annis's net worth. They are merely an attempt to show the order of magnitude of Annis's wealth.

Income and Reasonable Value  
of Services for which Defendant  
Is not Adequately Compensated

In meeting his needs, defendant may rely not only on the aforementioned assets, but on an income of \$6 ,000 per year, including the \$25,000 compensation from General Cigar and the \$35,000 in consulting payments from Master Packaging which will be deemed to be received by Annis for purposes of this motion.

Amount of the Judgment

As noted, the judgment against Annis is for \$182,065.44. If defendant were required to pay \$5,000 per month or \$60,000 per year as plaintiff requests, more than three years would still be required to discharge the obligation fully. At a rate of \$3,000 per month or \$36,000 per year, a period of a little more than five years will be required, and this would seem to be the outside period that would be reasonable under the circumstances.

Summary

In light of defendant's substantial net worth and annual income and in view of the size of the judgment in this case, the court concludes that it would be reasonable for Annis to make installment payments to

plaintiff of \$3,000 per month plus interest,<sup>22</sup> and defendant is hereby ordered to do so.

The instant installment payment order is not limited by the Federal garnishment laws contained in 15 U.S.C. §§1671-1677. The 25 per cent limitation of 15 U.S.C. §1673(a) is applicable only to "garnishments" which are defined in 15 U.S.C. §1672(c) as "any legal or equitable procedure[s] through which the earnings of any individual are required to be withheld for payment of any debt." The definition clearly follows the common meaning of the term and refers to an order requiring an employer or other garnishee to "withhold" earnings from the debtor. As noted, an installment payment order runs not against a garnishee, but against the judgment debtor personally, and can therefore not be classified as a garnishment.<sup>23</sup>

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<sup>22</sup> The form of order submitted by the parties should provide for proration of interest over a five-year period.

<sup>23</sup> The definition of "garnishment" is governed by §1672(c), but state law may be instructive in interpreting that section. Under §46 of the New York Personal Property Law, the definition of "garnishment" expressly excludes the installment payment order.

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In conclusion, the parties are directed to settle an order on ten days' notice vacating the execution of February 21, 1975; vacating the restraining notice of October 7, 1974, against General Cigar Corporation; and providing an installment payment order directing defendant to make installment payments to plaintiff of \$3,000 plus interest, per month.

SETTLE ORDER.

Dated:

New York, New York  
October 1, 1975

*Robert L. Carter*

ROBERT L. CARTER  
U.S.D.J.



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United States District Court  
FOR THE  
Southern District of New York

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WEINBAUER TRADING COMPANY, LTD.,

Plaintiff-Judgment Creditor,

- against -

MORION L. ANNIS,

Defendant-Judgment Debtor.

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OPINION

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ROBERT L. CARTER

---

v. 782

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
WEITNAUER TRADING COMPANY, LTD.,

Plaintiff--Judgment Creditor,

--against--

MORTON L. ANNIS,

Defendant--Judgment Debtor,  
-----X

COUNTER-ORDER

Docket No. 71 Civ. 782  
(RLC)

Upon the order to show cause signed by Judge Robert L. Carter dated April 30, 1975, the affidavit of Leslie D. Corwin sworn to April 30, 1975, and the exhibits annexed thereto, in support of defendant's motion to modify plaintiff's execution dated February 21, 1975, and upon plaintiff's cross-motion dated May 1, 1975, for an installment payment order pursuant to §5226 of the New York Civil Practice Law and Rules, the affidavit of Victor A. Kovner, sworn to May 1, 1975, in support thereof, with the exhibits annexed thereto, the affidavit of William P. Laino, attorney for General Cigar Corp., the garnishee, sworn to May 1, 1975, the supplemental affidavit of Leslie D. Corwin in support of the motion to modify the execution and in opposition to plaintiff's cross-motion, sworn to May 5, 1975, the reply affidavit of Victor A. Kovner sworn to May 7, 1975, in support of the cross-motion and the exhibits submitted in connection therewith, and

the matter having come on for argument before the Court on May 1, 1975, and upon due deliberation, and upon the decision of the Court dated October 1, 1975, it is

ORDERED that:

1. The Court's decision of May 28, 1975, denying defendant's motion to vacate the Restraining Notice issued to General Cigar Corp., dated October 7, 1974, is recalled and such Restraining Notice is vacated.

2. The execution of February 21, 1975, is vacated.

3. Morton L. Annis, the defendant judgment debtor is directed to pay, out of all monies received, to be received or which he is entitled to receive, from any source including but not limited to payments due from General Cigar Corp., pursuant to its agreement with the judgment debtor dated June 10, 1971, and payments due from Master Packaging Co., pursuant to its agreement for marketing services with the judgment debtor dated July 2, 1973, in each and every month, on the first day thereof, for a five year period calculated from May 1, 1975, the day this cause was heard, the following payment: (a) principal, the sum of \$3,000 against the principal amount of the judgment, \$182,065.44, and (b) interest, monthly interest of \$1,253.93, being the accrued interest as of May 1, 1975 prorated over 60 payments, together with future interest payable at a rate of 6% per annum for five years on the declining balance of the principal amount of the judgment, prorated over such period. Thus, the aggregate monthly installments hereunder shall be the sum of \$4,253.93 per month.

4. Morton L. Annis is further directed to pay on or before October 31, 1975, the aforesaid installment payments for the months of May, June, July, August, September and October 1975, or an aggregate of \$25,523.58 from the sum of \$26,041.67, previously accrued by General Cigar Corp., for his benefit, which sum is to be received by him from General Cigar Corp.

5. Morton L. Annis is further directed to pay on June 1, 1980, a final installment payment in the sum of \$2,075.77 to cover such balance of principal and interest as remains due after payment of the sixtieth installment.

6. All payments made hereunder shall be by bank or certified check to the order of Lankenau Kovner & Bickford, as attorneys for judgment creditor and shall be delivered personally or by pre-paid certified or registered mail, return receipt requested, to Lankenau Kovner & Bickford, 30 Rockefeller Plaza, New York, New York 10020.

7. Upon any acceleration of the payment of the principal amount of the judgment, as a result of payments not provided for herein, the amount of the installment payments shall be adjusted accordingly.

Dated: New York, New York  
October , 1975

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United States District Judge



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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
WEITNAUER TRADING COMPANY, LTD.,

Plaintiff-Judgment Creditor,

AFFIDAVIT

-against-

Docket No. 71 Civ. 782  
(RLC)

MORTON L. ANNIS,

Defendant-Judgment Debtor.  
-----X

STATE OF NEW YORK     )  
                              : ss.:  
COUNTY OF NEW YORK    )

VICTOR A. KOVNER, being duly sworn, deposes and says:

1. I am a member of the firm of Lankenau Kovner & Bickford, trial counsel for Weitnauer Trading Company, Ltd., the plaintiff-judgment creditor herein and submit this affidavit in support and explanation of plaintiff-judgment creditor's proposed counter-order submitted herewith.

2. As noted by the Court, this judgment of over \$180,000 has been outstanding for well over a year and no part thereof - not one dollar - has been paid to date and interest on the judgment continues to mount. Moreover, the defendant's attempt to divest himself of assets in an effort to frustrate collection of the judgment has been noted by this Court.

3. In view of the foregoing, paragraph 3 of the counter-order specifically identifies payments due to the judgment debtor from General Cigar Corp. and Master Packaging Co. It also provides that the installment payments shall be made as of May 1, 1975, the date the motions were argued before the Court.

4. In view of the broad discretion afforded to the Court pursuant to CPLR §5226, such provisions are entirely appropriate. Moreover, since General Cigar Corp., has accrued \$26,041.61 as of this date for the benefit of the defendant-judgment debtor, which monies shall be paid over by General Cigar Corp., as a result of the vacating of the October 7, 1974 Restraining Notice and the February 21, 1975, Execution, requiring payment of the installment payments as of May 1, 1975 will in no way "work a hardship on the defendant and impose a burden he cannot meet." Kaufman v. Kaufman, 29 A.D. 2d 922, 289 N.Y.S. 2d 23 (1st Dept. 1968). Indeed, defendant will have the full sum required to make the payments due from May 1, 1975, without the need of invading or seeking funds on which he is dependent.

5. Thus, paragraph 4 of the counter-order provides that the installments for the period of May through October 1975 will be obtained from the funds to be remitted by General Cigar Corp. Since "CPLR 5226 should apply to any money received after issuance of an installment payment order including compensation for services rendered prior to the date on which the order issued" it is appropriate to take into consideration those funds (6 New York Civil Practice, Weinstein-Korn-Miller, 52-398, nt.54).

6. Paragraph 5 of the counter order provides for a sixty-first installment, which is required by reason of the fact that sixty installments of \$3,000 against principal will not repay

the full principal amount of the judgment of \$182,065.44. Moreover, some interest on such remaining portion of the principal would remain outstanding.

7. To avoid any confusion or dispute as to the proper amount of interest to be included in each installment payment, the counter-order sets forth the precise dollar amount, composed of \$3,000 of principal and \$1,253.93 of interest. The interest portion was calculated to cover interest accrued from the date judgment was entered, June 20, 1974, until May 1, 1975, when the installments begin, and to cover interest on the declining balance of principal during the five years of installment payments.

(a) The interest accrued as of May 1, 1975 was calculated in accordance with the terms of the judgment as follows:

\$150,000 at 7.5% from 9/22/70-8/31/72, plus  
 150,000 at 6% from 9/1/72-5/1/75, plus  
 32,065.44 at 6% from 6/20/74-5/1/75  
 equals \$47,165.77

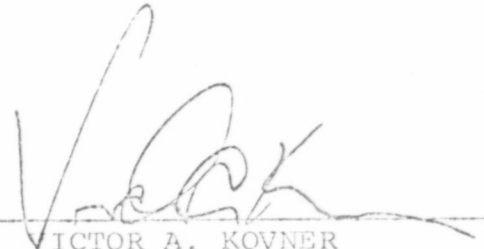
The aggregate accrued interest when divided and spread equally over 60 installments, equals \$786.10 per installment.

(b) The future interest payable at a rate of 6% on the declining balance over the five year period was calculated by averaging the amount of interest payable each month on the remaining balance, crediting the judgment debtor with a \$3,000 reduction in principal per month. The interest on the sixty installments, ranges from \$910.33 for the first month on the full principal to \$25.33 the 60th month on the then remaining principal; thus, the average interest due equals \$467.83. The sum of \$786.10 and \$467.83

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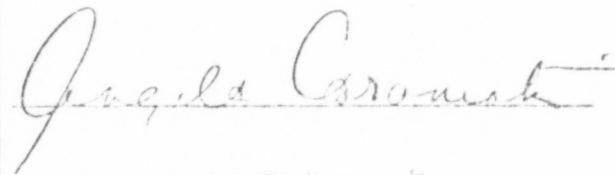
(c) The balance of the future payable interest of \$10.33 has been added, in the order, to the sixty-first and final installment.

8. Because the order proposed by the defendant-judgment debtor will not adequately protect the plaintiff-judgment creditor in the circumstances here, and because the proposed counter-order is not burdensome or prejudicial to the defendant-judgment debtor, I respectfully urge that the counter-order submitted herewith be signed.



VICTOR A. KOVNER

Sworn to before me this  
22d day of October, 1975



ANGELA CARAMAZZA, JUDGE  
Clerk of New York City Court  
Commissioner of the Court  
Court of the City of New York  
Commissioner of the Court 77



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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
WEITNAUER TRADING COMPANY, LTD.,

Plaintiff-Judgment Creditor,

O R D E R

-against-

: Docket No. 71 Civ. 782  
(RLC)

MORTON L. ANNIS,

Defendant-Judgment Debtor.  
-----X

This cause having come on for hearing on May 1, 1975, on defendant-Judgment Debtor's order to show cause on motion to modify income execution, and plaintiff-Judgment Creditor having cross-moved for an installment payment order, and the Court having heard the argument of Victor A. Kovner, Esq., for the plaintiff-Judgment Creditor, and Leslie D. Corwin, Esq., for the defendant-Judgment Debtor, and being fully advised, it is

ORDERED that:

1. The Restraining Notice issued to General Cigars (sic) Corp., dated October 7, 1974, was improper and is vacated.
2. The Execution of February 21, 1975, issued by the plaintiff-Judgment Creditor against the fund accumulated by General Cigar Corporation as a result of the improper Restraining Notice, is vacated.
3. General Cigar Corporation is directed to pay over to the defendant-Judgment Debtor, Morton L. Annis, immediately, the fund accumulated as of October 15, 1975, to wit, \$26,041.67,

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by check payable to "Rich, Krinsly, Poses, Katz & Lillienstein, as attorneys for Morton L. Annis".

4. The \$26,041.67 fund so accumulated by General Cigar Corporation and paid over to the attorneys for the defendant-Judgment-Debtor, Morton L. Annis, is not subject to execution under CPLR §5230.

5. General Cigar Corporation is permitted as of the date of this Order to continue to make payments directly to the defendant-Judgment-Debtor, Morris L. Annis, pursuant to the consulting agreement dated June 10, 1971.

6. The Court's decision of May 28, 1975, denying defendant's motion to vacate the October 7, 1974 Restraining Notice, is recalled and that motion is granted.

7. Starting with November, 1975, for a five (5) year period, the defendant-Judgment Debtor, Morton L. Annis, is directed to make installment payments to the plaintiff of \$3000.00 per month with proration of interest over the five (5) year period.

Dated, New York, New York  
October , 1975.

United States District Judge

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
WEITNAUER TRADING COMPANY, LTD.,

Plaintiff-Judgment  
Creditor,

- against -

MORTON L. ANNIS,

Defendant-Judgment  
Debtor.

-----X  
STATE OF NEW YORK )  
                          SS:  
COUNTY OF NEW YORK)

:  
: REPLY AFFIDAVIT

:  
: DOCKET NO. 71 CIV.782  
: (RLC)

LESLIE D. CORWIN, being duly sworn, deposes and says:

1. I am an attorney associated with the firm of RICH, KRINSKY, POSES, KATZ & LILLIENSTEIN, ESQS., attorneys for the Defendant-Judgment Debtor herein and submit this affidavit in support of Defendant-Judgment-Debtor's proposed order and in opposition to the proposed counter-order submitted by the Plaintiff-Judgment Creditor.

2. It should be pointed out to the Court that it was the Defendant-Judgment Debtor who brought this matter before the Court by order to show cause on the motion to modify income execution. This procedure was followed only because on

October 7, 1975 a Restraining Notice had been issued to General Cigar pursuant to CPLR §5222, restraining it from transferring to Mr. Annis any money or property due or becoming due to Mr. Annis. On or about February 21, 1975, Plaintiff-Judgment-Creditor's counsel issued "execution with notice to garnishee" to General Cigar against "monies past due pursuant to consulting agreement". General Cigar refused to continue making payments to Mr. Annis pursuant to a consulting agreement dated June 10, 1971, and accordingly, Mr. Annis moved to reduce the execution issued to General Cigar. Only then did the Plaintiff-Judgment-Creditor move for an installment payment order.

3. Mr. Annis has felt all along that General Cigar had no right to withhold the funds due him pursuant to his consulting agreement. In its opinion of October 6, 1975, the Court held that the Plaintiff had no right to cause General Cigar to refuse to make payment to Mr. Annis. In its opinion, the Court noted as follows:

\*\*\* "It seems clear that General Cigar has allowed Annis's payments to accumulate and become "past due"-- thus placing them within range of a §5230 execution-- only because General Cigar believed that it was barred from making the payments to Annis by the October 7, 1974, restraining notice.\*\*\*" (Page 6 of Opinion.)



\*\*\*\*\*"Thus, if Annis's payments may be deemed wages or earnings, plaintiff had no right to cause General Cigar to refuse to make payment to Annis and thereby accumulate the "past due" funds upon which plaintiff seeks to execute. Plaintiff will not be permitted to profit from wrongdoing, and if the October 7 restraining notice was improper, plaintiff is not entitled to execute under \$5230 on the fund accumulated solely as a result of the notice.\*\*\*" (P. 7 of Opinion.)

\*\*\* "In summary, the October 7, 1974, restraining notice was improper since issued against wages and earnings of the debtor, and the execution issued against the fund accumulated as a result of the improper notice should be vacated. In addition, the court's decision of May 28, 1975, denying a motion to vacate the October 7, 1974, restraining notice is recalled, and that motion is granted." (P. 9 of Opinion.)

4. In UNI-SERV CORP. v LINKER, 62 Misc. 2d. 861, 311 New York Sup. 2d 726 (Civil Court, New York County, 1970) Justice Martin B. Stecner in discussing the procedure to be followed under CPLR §5226, for an installment payment order, stated as follows:

"The statute (CPLR 5226) and its predecessor (C.P.A. 793, 744) established the procedures to be followed and the standards of proof which must be met before such an order may issue. The current statute requires a notice of motion; proof "that the judgment debtor is receiving or will receive money from any source, or is attempting to impede the judgment creditor by rendering services without adequate compensation"; and consideration by the court of "the reasonable requirements of the judgment debtor and his dependents" as well as the debtor's other judgments, wage assignments and the like." (Emphasis ours.)

The Court has considered both motions and in its opinion has directed the parties to submit the form of order.

5. In its proposed counter-order, the Plaintiff-Judgment-Creditor seeks to direct the Defendant-Judgment-Debtor "to pay on or before October 31, 1975, the aforesaid installment payments for the months of May, June, July, August, September and October, 1975, or an aggregate of \$25,525.58 from the sum of \$26,041.67, previously accrued by General Cigar, for his benefit, which sum is to be received by him from General Cigar Corporation". Nowhere in the opinion of this Court is such a provision provided for to require Defendant-Judgment-Debtor to make back payments. To require such, would impose an undue hardship on him.

It is respectfully pointed out to the Court that Mr. Annis has been deprived of the use of the General Cigar funds for well over a year. This is a direct result of the improper restraining notice issued by plaintiff to General Cigar. As this Court noted, "Plaintiff will not be permitted to profit from wrong-doing."

6. In his affidavit of October 22, 1975, Mr. Kovner cites the case of KAUFMAN v KAUFMAN, 29 A.D. 2d 922, 289 N.Y.S. 2d 23 (1st Dept. 1968) for the proposition that the Defendant-Judgment-Debtor should be required to make installment payments as of May 1, 1975. A careful reading of that case indicates just the antithesis. In KAUFMAN, the Court stated as follows:

\*\*\* "Furthermore, we find that the delay in the entry of the order was not brought about by defendant, so that requiring payments to begin as of the date of institution of the proceeding will work a hardship on the defendant and impose a burden he cannot meet." (289 N.Y. Sup. 2d at Page 24 through 25.)

5. Because the proposed order submitted by the Plaintiff-Judgment-Creditor is both burdensome and prejudicial to the Defendant-Judgment-Debtor, I respectfully urge that the proposed order submitted by the Defendant-Judgment-Debtor be signed.

131  
\_\_\_\_\_  
LESLIE D. CORWIN

SWORN TO BEFORE ME THIS  
21 DAY OF OCTOBER, 1975.

131  
\_\_\_\_\_  
RHODA WEINSTEIN  
NOTARY PUBLIC, State of New York  
No. 20-01WE4506615  
Qualified in Nassau County  
Commission Expires March 30, 1976

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X

WEITNAUER TRADING COMPANY, LTD.,

DOCKET NO. 71 Civ. 782  
(RLC)

Plaintiff-Judgment Creditor,

against

NOTICE OF APPEAL

MORTON L. ANNIS

Defendant-Judgment Debtor.

-----X

Notice is hereby given that MORTON L. ANNIS, the defendant-judgment debtor above named hereby appeals to the United States Court of Appeals for the Second Circuit from so much of the Order entered in this action on the 30th day of October, 1975 that directs the defendant-judgment debtor to pay by bank or certified check to the order of Lankenau, Kovner & Bickford as attorneys for judgment creditor in each and every month, on the first day thereof, for a five year period calculated from May 1, 1975: (a) principal, the sum of \$3,000 against the principal amount of the judgment, \$182,065.44, and (b) interest, monthly interest of \$1,253.93, making the aggregate monthly installments \$4,253.93 per month; and which further directs the defendant-judgment debtor to pay, by bank or



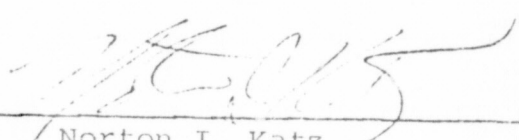
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certified check to the order of Lankenau, Kovner & Bickford, as attorneys for judgment creditor: (c) on or before October 31, 1975, the aforesaid installment payments for the months of May, June, July, August, September and October, 1975 aggregating \$25,523.58, from the sum of \$26,041.67 previously accrued by General Cigar Corp., for his benefit; and (d) on June 1, 1980, a final installment payment in the sum of \$2,075.77.

Dated: New York, New York  
November 21, 1975

RICH, KRINSKY, POSES, KATZ &  
LILLIENSTEIN  
Attorneys for Defendant-Judgment  
Debtor  
99 Park Avenue  
New York, New York 10016  
(212) 867-7200

By

  
Norton I. Katz  
Member of the Firm

A G R E E M E N T

AGREEMENT entered into this 2nd day of July, 1973, by and between MORTON L. ANNIS, SR. ("Annis"), doing business as Morton L. Annis & Associates, and MASTER PACKAGING, INC., a Florida corporation, ("Master").

Master has determined, for the present, not to create an "inhouse" marketing department. Annis, for his part, desires to carry on marketing activities for Master. The purpose of this Agreement, therefore, is to set forth the terms and conditions under which Annis will carry out marketing activity on Master's behalf.

1. Term of Agreement. This Agreement shall continue for five (5) years from date or for such longer period, if any, during which Master is indebted to Annis, or during which Annis is a guarantor of any of Master's debts.

2. Duties. For the term of this Agreement, Annis shall devote his time and efforts to the development of new sales and marketing concepts and products for Master, as well as the improvement of Master's current products. Nothing herein contained shall be deemed to prevent Annis from either making passive investments or conducting private business affairs, provided that neither the private business affairs, whether conducted alone, as a partner, or as an officer, director, employee, or shareholder of any other corporation or as a trustee, fiduciary, or other representative, nor the business of the entities or activities in which he passively invests are competitive with or adverse to Master's business.

3. Fees, Commissions and Expenses. Annis' total compensation shall be in two parts, a monthly payment ("Basic Fee") and commissions ("Commissions"). It is understood and agreed that Annis shall bear all expenses incurred in carrying out his duties.

The Basic Fee for each month shall be \$3,000.00 payable \$1,500.00 on the fifteenth day and \$1,500.00 on the thirtieth day of each month.

In addition to Basic Fee, on each sales and marketing concept accepted and utilized by Master, Annis shall be entitled to such Commission as shall be agreed upon between Annis and Master prior to the utilization of such concepts by Master. Such Commission on each such item utilized shall continue for the period of utilization through the date of Annis' death. In the case of Annis' death, such Commission on any item utilized shall be payable only as to items sold by Master as of the date of Annis' death.

Anything herein contained to the contrary notwithstanding, should Annis die at a time when Master is still either indebted to him or he is still a guarantor on any of Master's debts, or both, then, for the remaining term of the Agreement, the Basic Fee shall be reduced to \$1,500.00 per month.

4. Trade Secrets, Discoveries, and Inventions. Annis hereby agrees that:

(a) He will not, either during or after the termination of this Agreement, divulge any trade secrets, secret processes or secret formulae used by or belonging to Master or any of its subsidiaries.

(b) Any ideas, inventions, processes, formulae, methods, improvements, or customer lists, relating to Master's business, and utilized by Master, devised, conceived, acquired or invented by him or anyone in his employ during the term of this Agreement shall be the sole and exclusive property of Master and he will cooperate fully in executing any document, including assignments of patents, copyrights, trademarks, or trade names, reasonably requested by Master in order to perfect and protect its rights thereto.

5. Restrictive Covenant. For a period of two years beginning on the date of the termination of this Agreement Annis agrees that:

(a) he will not, directly or indirectly, as a stockholder, owner, operator, or by any other means, engage in, or carry on, in the United States of America any business competitive with the business of Master as carried on by Master on the date of the termination of this Agreement;


(b) if a portion of the restrictive covenant set out in (a) is held to be unreasonable, arbitrary or against public policy, then the Agreement shall be considered divisible both as to size and geographical area and each month of the two year period shall be deemed a separate period of time and each county in each of the states of the United States of America shall be deemed a separate geographical area so that the lesser period of time or geographical area shall remain effective so long as the same is not unreasonable, arbitrary, or against public policy; and

(c) in the event any court determines the time period of two years or the geographical area specified is unreasonable, arbitrary or against public policy, then a

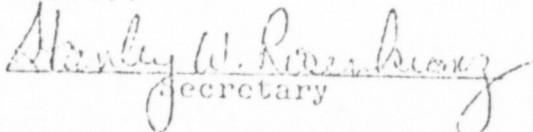


lesser time period or a geographical area which is determined to be reasonable, not arbitrary and not against public policy may be enforced against Annis.

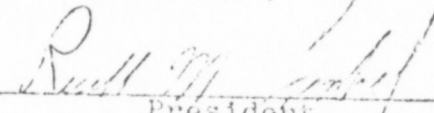
6. Repayment of Fees and Commissions. In the event that all or any portion of the fees and commissions paid Annis by Master, pursuant to paragraph 3 above, is disallowed by the Internal Revenue Service or the Revenue Department of the State of Florida, or both, as a deductible expense of Master, Annis agrees to reimburse Master to the extent of the disallowed amount, within thirty days after Master has notified him of the disallowed amount. If Master is not fully reimbursed within said thirty day period, it shall have the right to withhold up to 15% of all future payments of total compensation until the amount owed Master by reason of this paragraph, is paid in full. Master shall not be required to litigate the issue of the deductibility of such compensation, but it may concede, settle, or compromise this issue with the Internal Revenue Service, and such concession by Master shall be binding on Annis. The remedies afforded Master under this paragraph are in addition to (and not in lieu of) any remedies afforded Master under its By-Laws.

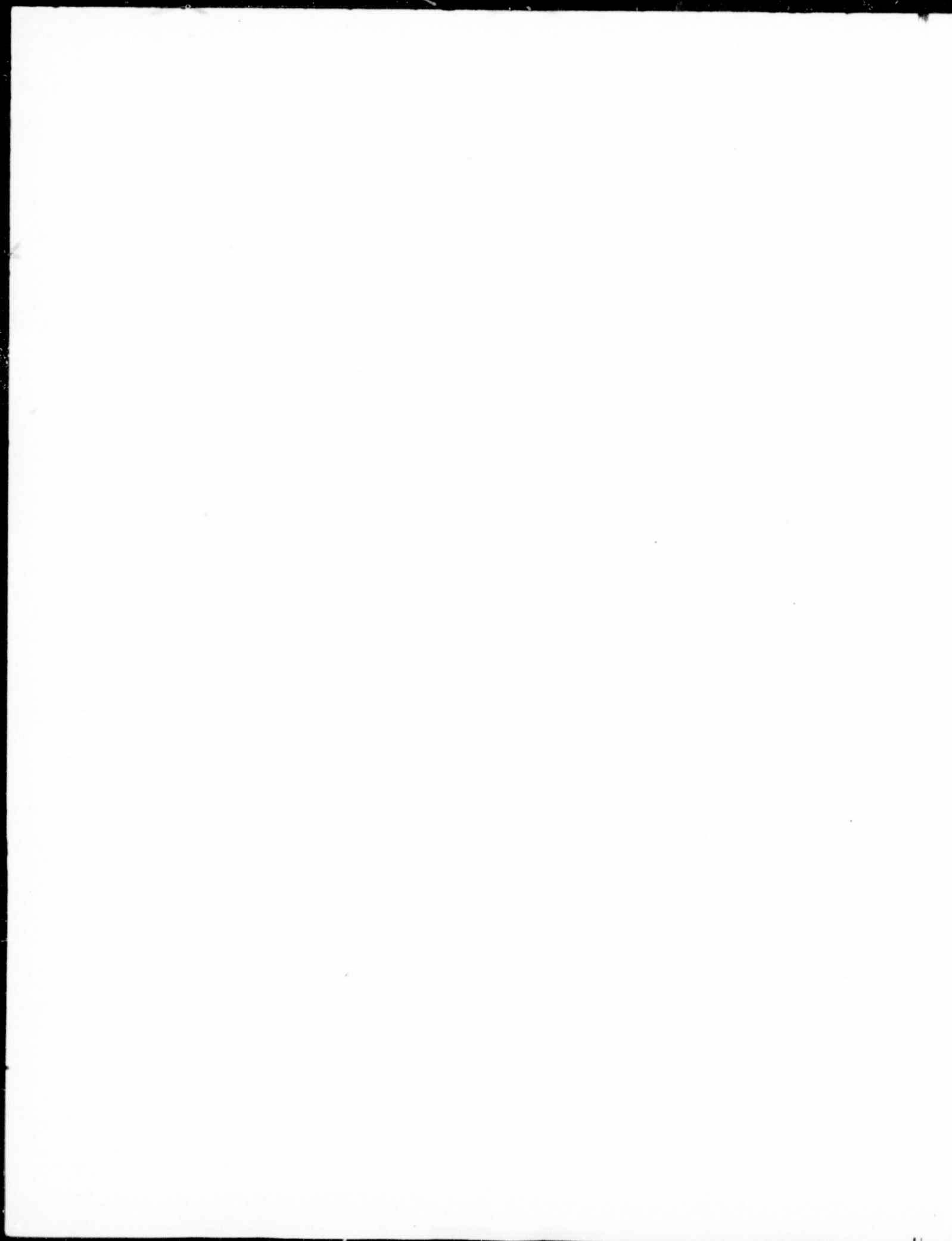
  
Morton L. Annis, d/b/a Morton L.  
Annis & Associates

Attest:

  
Secretary

MASTER PACKAGING, INC.

By   
President



Service of 1 copies of this within

Applicant is admitted this

31 day of December 1975

Lankenau Kovner & Buckford

ATTORNEYS FOR Plaintiff = Subject

Cred. for = Appellee

COPY RECEIVED by hand/delivery/mail  
LANKENAU KOVNER & BUCKFORD

By Emilia Papatac  
Attorneys for

Date: 12/31/75 Time: 3 30 pm